fundamentals, but we do not know the important details behind this. What I am saying is, this is not the choice of the majority leader. It is the choice of the Congressional Budget Office. We may find that something that was sent over there doesn't work at all, doesn't fly. They may say this is not going to work, start over. So we have to reserve the right to do that, and I think that is why we are waiting for the Congressional Budget Office scoring, as they call it, to make sure it hits the levels we want, in terms of deficit reduction and reducing the cost of health care.

It is frustrating on your side. It is frustrating here. But I am hoping, in a matter of hours, maybe days, we will receive the CBO report.

I would like to ask the Senator from Arizona, if he wouldn't mind responding to me on this. Does the Senator believe the current health care system in America is sustainable as we know it, in terms of affordability for individuals and businesses? Is the Senator concerned that more and more people do not have the protection of health insurance; fewer businesses offer that protection?

The ACTING PRESIDENT pro tempore. The 10-minute time period has expired.

Mr. MCCAIN. I ask unanimous consent for 5 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Is the Senator concerned as well with the fact that we have 50 million Americans without health insurance and the number is growing; that in many of the insurance markets across America there is no competition, one or two take-it-or-leave-it situations? Does that lead him to conclude we cannot stay with the current system but have to make some fundamental changes and reforms?

Mr. MCCAIN. I say to my friend, everything he said is absolutely correct. I am deeply concerned about the situation of health care in America. I know the Senator from Illinois is deeply concerned about the fact that it is going to go bankrupt, about the fact that the Medicare trustees say that within 6 or 7 years it is broke. From what we hear, there is now a proposal over there to extend eligibility for Medicare, which obviously puts more people in the system, which obviously, under the present setup, would accelerate a point of bankruptcy, at least from what I know of this.

But the fundamental difference we have, in my opinion, is not what we want—we both share the deep ambition that every American has affordable and available health care—it is that we believe a government option, a government takeover, a massive reorganization of health care in America will destroy the quality of health care in America and not address the fundamental problem. We believe the quality is fine.

We think the problem is bringing costs under control. When you refuse to address an obvious aspect of cost savings such as malpractice reform, such as going across State lines to obtain health insurance, such as allowing small businesses to join together and negotiate with health care companies, such as other proposals we have, then that is where we have a difference. We share a common ambition, but we differ on the way we get there. I do not see in this bill, nor do most experts, a significant reduction in health care costs except slashing Medicare by some $½ trillion, which everybody knows doesn't work, and destroying the Medicare Advantage Program of which in my home State 330,000 seniors are a part.

Mr. DURBIN. I say to the Senator two or three things. First, the CBO tells us this bill will make Medicare live 5 years more. This bill will breathe into Medicare extended life of 5 additional years. Second, I have heard a lot of negative comments about government-sponsored health care. I ask the Senator from Arizona, is he in favor of eliminating the Medicare Program, the veterans care program, the Medicaid Program, the CHIP program to provide health insurance for children, all basically government-administered programs? Does he believe there is something fundamentally wrong with those programs that they should be jettisoned and turned over to the private sector?

The second question, does the Senator from Arizona want to justify why Medicare Advantage, offered by private health insurance companies, costs 14 percent more than the government plan being offered, and we are literally subsidizing private health insurance companies to the tune of billions of dollars each year so they can make more profits at the expense of Medicare?

Mr. MCCAIN. First, obviously I want to preserve those programs. But every one of those the Senator pointed out is going broke. They are wonderful programs. They are great things to have. But they are going broke. He knows it and I know it, and the Medicare trustees know it. To say that we don't want these programs because we want to fix them is obviously a mischaracterization of my position, our position. We want to preserve them, but we all know they are going broke. It means cost savings. It means malpractice reform. It means all the things I talked about. The Senator mentioned Medicare Advantage. That is called Medicare Part C. That is part of the Medicare system. There are arguments made that there are enormous savings over time because seniors who have this program, who have chosen it, who haven't violated any law, are more well and more fit and have better health over time, thereby, in the long run, causing significant savings in the health care system which is what this is supposed to be all about. I ask in response: How in the world do you take a Medicare system which, according to the trustees, is going broke and then expand it to people between age 55 and 64? The math doesn't work. It doesn't work under the present system which is going broke. To add on to it, any medical expert will tell you, results in adverse selection and therefore increases in health care costs.

Mr. DURBIN. If I may respond, why is Medicare facing insolvency? Why is it going broke? Why are the other systems facing it? Because the increase in cost in health care each year outstrips inflation. There is no way to keep up with it unless we start bending the cost curve. We face that reality unless we deal with the fundamentals of how to have more efficient, quality health care. Going broke is a phenomena not reflective in bad administration of the program but in the reality of health care economics.

What I am about to say about the expanded Medicare is based solely on press accounts, not that I know what was submitted to CBO in detail. I do not. But the 55 to 64 eligibility for Medicare will be in a separate pool sustained by premiums paid by those going in. If they are a high-risk pool by nature, they will see higher premiums. What happens in that pool will not have an impact on Medicare, as I understand it. It will be a separate pool of those receiving Medicare benefits that they will pay for in actual premiums. It won't be at the expense or to the benefit of the Medicare Program itself. What I have said is based on press accounts and not my personal knowledge of what was submitted to CBO.

Mr. MCCAIN. The Senator has seen the CMS estimates this morning that this will mean dramatic increases in health care costs. You may be able to expand the access to it, but given the dramatic increase, one, it still affects the Medicare system and, two, there will obviously be increased costs, if you see the adverse selection such as we are talking about.

I see the staff is getting restless. I ask my friend, maybe we could do this again during the weekend and during the week. I appreciate it. I think people are helped by this kind of debate. I respect not only the passion but the knowledge the Senator from Illinois has about this issue.

Mr. DURBIN. I thank the Senator.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER (Mr. BEGICH). The clerk will report.

The bill clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, one of the troubling aspects of this conference report is that the appropriators air dropped three very significant spending bills into the text during conference. In other words, three bills without any debate, discussion or amendment were air dropped into this pending legislation. The three bills are the Labor-HHS-Education, financial services and general government, and the State-Foreign Operations appropriations bills. Combined, these three bills spend over $237 billion and contain 2,019 earmarks. It is remarkable and unacceptable that the Senate is willing to approve expenditure of such huge sums without the opportunity to debate and amend their content.

I see the Senator from Hawaii, who will say: This is the way we have had to do business before. We have to do this because of the pressure of time, the fiscal year ended, et cetera, et cetera. Again, we get back to this old line that we heard for an entire year and even early this year about change, about how we were going to change things in Washington. We are going to change the way we do business.

President Obama said about the last omnibus bill passed last March, 3 months into the Obama administration:

> The future demands that we operate in a different way than we have in the past. So let there be no doubt: this piece of legislation must mark an end to the old way of doing business and the beginning of a new era of responsibility and accountability that the American people have every right to expect and demand.

What are we doing today? The exact same thing that we were doing before.

Here is a quote from the White House Chief of Staff Rahm Emanuel about the last omnibus bill. This is the one we weren't going to do anymore.

> Second, this is last year's business.

He was talking about the one we passed in March.

> And third, most importantly, we are going to have to make some other changes going forward to reduce and bring more—reduce the ultimate number and bring the transparency. And that's the policy that he enunciated in his campaign.

Bob Schieffer:

> But it sounds to me like what you're—what he's about to do, here, is say, well I don't like this but I'm going to go ahead and sign it—

Talking about the last omnibus bill—

> but I'm going to warn you, don't ever do it again. Is that what's about to happen here?

Emanuel:

> In not so many words, yes.

And then, of course, the Senate majority leader said about the last omnibus:

> We have a lot of issues we need to get to after we fund the government, something we should have done last year but we could not because of the difficulty we had with working with President Bush.

I wonder if we are going to blame President Bush for this one. If it rained, if it didn't rain? We blamed him for almost everything. Whatever it is, let's blame President Bush. The point is, what this bill is, and another one that will be coming up in a couple days, is exactly the same business as usual, a porkbarrel-laden bill with increases in spending when the American people are hurting in the worst possible way. The American people are hurting and the Labor, Health and Human Services and Education appropriations bill has $11.3 billion or a 7-percent increase in spending over last year's spending level. Where are we? This is America. Americans are hurting. There is 10 percent unemployment. People can't stay in their homes. They can't keep their jobs. We are passing a piece of legislation with 1,749 earmarks just in the Labor, Health and Human Services piece of over $806 billion.

Do you want to hear a few of them? They are fascinating. Here is my favorite of all—there are a lot of good ones—$2.7 million to support surgical operations in outer space at the University of Nebraska. I assure my colleagues, I am not making that up. That is an appropriation in this bill. Let me repeat: $2.7 million to support surgical operations in outer space. There are a lot of compelling issues before the American people. Surgical operations in outer space at the University of Nebraska? I guess the University of Nebraska has some kind of expertise that they need $2.7 million so we could support surgical operations in outer space. I wonder when the next surgical operation is scheduled in outer space? Maybe we ought to go into that.

I will be spending more time on the floor on this. But $30,000 for a Woodstock film festival youth initiative? Woodstock was a pretty neat experience, but do we need to spend $30,000 to revisit that one? There is $200,000 to renovate and construct the Laredo Little Theater in Texas. The next time you are in Laredo, be sure to stop by the theater and see $200,000 of your money which is going to renovate and construct this little theater. There is $500,000 for the Botanical Research Institute of Texas in Fort Worth; $200,000 for a visitors center in Bastrop, TX, a visitor center there in Bastrop with a population of 5,340 people. We are going to spend $200,000 of my taxpayers' dollars to build them a visitor center. There is $200,000 for design and construction of the Garapan public market in the Northern Mariana islands; $500,000 for development of a community center in Custer County, ID, population 4,342. If my math is right, that is about $100 per person. Right here in our Nation's Capital, $200,000 to the Washington National Opera for set design, installation and performing arts at libraries and schools. They have an operating budget of $32 million. Their Web site says the secret of its success is due to its position without the crucial government support typical in most world capitals. Then, of course, we always get back to Hawaii: $13 million on fisheries in Hawaii, nine projects throughout the islands ranging from funding the bigeye tuna quotas, marine education and training, and coral research.

The list goes on and on. The next time you are in New York, go to Lincoln Center. We are spending $800,000 of your money for jazz at the Lincoln Center. Jazz lovers, rejoice. For those who are not jazz lovers, we have $300,000 for music programs at Carnegie Hall; $3.4 million for a rural bus program in Hawaii. Apparently, the $1.9 million in the 2009 omnibus was not enough. In other words, we gave $1.9 million for this rural bus program in Hawaii so we have to now give them $3.4 million more.

Custer County, ID, with a population of 4,342, as of the year 2000—I am sure they have grown since—$500,000 for development of a community center in Custer County, ID.

The list goes on.

Then, of course, it is loaded with controversial policy riders that should have been debated in the Senate.

In the Department of Labor bill, the conference rescinds $50 million from unobligated immigration enforcement funds under section 286(v) of the Immigration and Nationality Act. This will result in a decrease in the enforcement of immigration law. I guarantee you, if that provision had been debated here on the floor of the Senate, that $50 million would never have been removed.

The conference agreement includes new language providing authority to the International Labor Affairs Bureau, the agency charged with carrying out the Department of Labor's international responsibilities. This may be a worthy program, but it should be addressed in legislation.

There are so many other policy provisions in this bill which have not been authorized, which is supposed to be done by authorizers.

The conference agreement provides $35 million for the Delta Health Initiative. The Delta Health Initiative provides a service to individuals in only one area of the country, the delta region of Mississippi. I have visited the delta region in Mississippi, and there are severe health needs. But couldn't we authorize this program? Couldn't we authorize it? Couldn't we have the proper debate and discussion?

The list goes on and on.

Of course, there is $25 million ''for patient safety and medical liability reform demonstrations'' that was not included in the House or Senate. Medical liability reform demonstrations—there is a demonstration project already in being. It is called the State of Texas, where they have reduced medical malpractice costs dramatically, and the physicians and caregivers are flowing back into the State of Texas.

Mr. President, I will be talking more later this afternoon about all the pork and earmarking that is in this bill.

I have to tell you that the anger and the frustration out there is at an incredibly high level. Those of us who—I am sure most of us do—spend a lot of time at townhall meetings and hearing from our constituents know there is a level of anger out there, the likes of which I have not seen before. Here they are, hurting so badly because they cannot keep their homes and their jobs. My home State of Arizona is No. 2 in the country of homes where the mortgage payment is higher than the home value—48 percent of the homes in my State. So here we are with 10-percent unemployment, with deficits—this year of $1.4 trillion—and there are dramatic increases, a 7-percent increase in spending in one, a 14-percent increase in spending in the other, and they do not get it. They do not get it. They do not get it. Americans are having to tighten their belts.

My home State of Arizona is in a fiscal crisis. They are having to cut services to our citizens because we cannot print money in Arizona. They only print money here. And here we are with Omnibus appropriations bills with as high as a 14-percent increase in spending, loaded down with billions of dollars worth of porkbarrel projects.

I predict to my colleagues that the anger out there will be manifest in a number of peaceful ways, including in the ballot booth. They are sick and tired of this. I saw a poll yesterday where the approval rating of Members of Congress has fallen below that of the approval rating for used car salespersons. I think it was at 4 percent, as I recall the poll. I have not met any of the 4 percent. I have not met anybody who approves of what we are doing.

This exercise we are in right here, on December 11, 2009, with a pork-laden Omnibus appropriations bill which frivolously and outrageously spends their dollars when they are struggling to keep their heads above water is something that is going to be rejected sooner or later by the American people. I have warned my colleagues that the American people are sick and tired of this. They did not like it before. Now they are fed up with it.

We will be hearing more this afternoon.

So, Mr. President, I rise today to raise a point of order under rule XXVIII against H.R. 3288, the Omnibus appropriations bill. I do this to ensure that this bloated legislation is not permitted to proceed to full consideration by the Senate.

Specifically, rule XXVIII precludes conference reports from including policy provisions that were not related to either the House or the Senate version of the legislation as sent to conference. Several provisions included in division D—the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act—of this omnibus bill are out of scope and were never considered on the floor of the Senate.

Mr. President, I raise a point of order that the conference report violates the provisions of rule XXVIII.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I move to waive all applicable sections of rule XXVIII, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Under rule XXVIII, there is up to 1 hour equally divided.

The Senator from Hawaii.

Mr. INOUYE. Mr. President, I yield myself 10 minutes.

Mr. President, I rise today with mixed emotions. When I assumed the chairmanship of the Appropriations Committee last January, I immediately reached out to the senior Republican member of the committee from Mississippi, Senator COCHRAN, to seek his support in achieving my central objective for the fiscal year: to return this appropriations process to the regular order. The vice chairman, Senator COCHRAN, agreed wholeheartedly, and together we committed to passing all 12 appropriations bills individually and to sending each of the completed bills to the President for his signature.

It might be of interest to my colleagues that of the 12 bills assigned to this committee, 11 were passed by the end of July, many months ago. One was held up at the request of the House but passed in mid-September. This is December. These bills have been passed. And it might be of further interest to the Senate that of the 12 bills, 9 were passed unanimously, bipartisan, 30 to 0. Three passed by one objection—29 to 1.

Completing action on our annual appropriations bills is our most fundamental responsibility. The Founding Fathers gave us the power of the purse, and for good reason. Our system of checks and balances, which has served us so well in the last 220 years, allows the executive branch to propose spending initiatives that make clear to us their intentions and desires. But the Constitution gives the Congress the ultimate decisionmaking authority, and it is our responsibility to fulfill this obligation.

Regular order allows each Senator the opportunity to debate and to amend each bill on an individual basis. Every Senator on both sides of the aisle recognizes that regular order is the preferred course of action.

The underlying Transportation, Housing and Urban Development bill will provide urgently needed funding so we can keep our transportation system safe and strong and provide much-needed assistance to our most vulnerable populations.

In addition, every one of the six bills we consider today was reported out by the full committee. As I pointed out, three of them were passed unanimously and the other three by a vote of 29 to 1. Every one of them has been written in a bipartisan fashion with considerable input on the part of the minority party.

The negotiations with our House counterparts have been spirited at times, but I can assure my colleagues that on the difficult issues, our subcommittee chairmen and ranking members have done an excellent job of defending Senate positions and of coming to fair and equitable compromises when such was necessary.

I would also note that on Tuesday evening, we held a full and open conference with the House at which every conferee, including 22 Members of the Senate, bipartisan Members, and 14 Members of the House, also bipartisan, was afforded the opportunity to offer amendments on any provision of the legislation. For the record, comity was demonstrated by the Senate conferees, and no amendments—no amendments—were offered on our side. At the conclusion of the conference, 16 conferees, including 4 Republican members, signed the conference report.

Finally, I can say this is a clean bill. There are no extraneous measures attached. For this reason, as I just mentioned, we have bipartisan support of the bill, and I am proud of that fact.

Some have criticized this bill as spending too much. I will point out that the amounts recommended in the bill are below the amounts requested by the President and equal to the amount approved by the Congress in the Budget Committee. It has been a long process. Furthermore, the only area where the committee exceeded the amount requested by the President is for military construction and for veterans.

Moreover, some have criticized the majority for resorting to an omnibus measure once again. Clearly, those who criticize are those responsible for this outcome. When the Senate needs 4 days to pass a noncontroversial conference agreement on the Energy and Water appropriations bill, we know the only reason can be that a few Members want to delay our progress. Why do they want to do that? So they can complain when the calendar has expired and we have no time left for the regular order.

As a reminder to all of us, the Military Construction bill was delayed for 6 days of debate on this floor. It was a bill that was voted out of the Appropriations Committee unanimously, bipartisan-wise, and then delayed. But after the delay of 6 days, this Senate passed it by a vote of 100 to 0. What was the opposition all about? What was the delay all about, when everyone here was in favor of it? There was not a single dissenting vote, so it is obvious there was not opposition to the bill. It was simply that a few Members wanted to delay the bill.

Mr. President, now is December 11, and it is nearly time to adjourn the

Senate for the year. We have not completed our work, and therefore we have consolidated six appropriations bills in one measure. My colleagues know precisely why we have reached this point, and it is not the fault of one member of the Appropriations Committee, nor the fault of the majority. It is the fault of a handful of Members who would rather see the responsibility for funding our Federal Government turned over to the bureaucrats and administration than have the Congress exercise its constitutional responsibility. I am a very patient person, but at times the rhetoric of this debate is too much to take.

With Senator COCHRAN, my vice chairman, as my partner, we have tried to move 12 individual bills only to be thwarted by a few Members—just a few Members. That is why we are here and where we are today with an omnibus bill.

As we look ahead to consideration of fiscal year 2011 appropriations bills, I hope all Members of the Senate will learn from the frustrations of this year. We can succeed in returning to regular order for appropriations. We only need a modicum of cooperation and a recognition that delay for the sake of delay serves no one's best interests, least of all the people of the United States.

I strongly support this clean, bipartisan bill. I urge my colleagues to support it as well.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, for several weeks I have been saying, where are the appropriations bills? Under Federal law, we are supposed to have those done by October 1—October 1. Let's see. This is December 10. We must be past that deadline.

Well, here come the bills. They are all packed into one. There won't be the debate we would get if we handled them one by one. It is fascinating to me that one of them is Health and Human Services. All year we have heard that health is what is breaking the people of this Nation, how important health care is; why we have to do health care reforms under strict deadlines—strict deadlines that have shifted a number of times and are irrelevant to getting a good bill. But health care is that important, and it is one-sixth of the Nation's economy. So why haven't we had the health care appropriations debate before October 1? Why did it get put off until now? I guess it is because all of the earmarks weren't ready yet or maybe it is because they thought this bill ought to pass and solve all of the problems.

I think the bill could have passed much faster. I think it could have solved a lot more problems. If it would have had the kind of bipartisanship Senator DURBIN keeps describing as having happened, we would already have the bill done. Much of what he keeps repeating—and the more times you repeat it doesn't make it more true—in every speech he gives, he makes the same comments about how long the HELP Committee worked on this bill and how many amendments from the Republican side were automatically accepted into the HELP bill. We always have to come out and correct that. Yes, there were a number of amendments. That bill was put together over a period of 2 weeks with a new committee chairman, without a single input from Republicans. It was brought to the committee for markup. We did have about 3 days to do amendments, and we did a lot of amendments. They did accept some of the amendments. Of course, we helped correct punctuation, we helped correct spelling, and we did have a few amendments that were accepted that actually made a difference.

After the vote, they didn't publish the bill for the public to look at—the amended version of the bill for the public to look at. I think that was so they could rip out the Republican amendments they had accepted. That has never been done in committees. When amendments are accepted, they are left in the bill, or at least the Senator who proposed the amendment gets to talk about why maybe it should or shouldn't be in there, or at least he is informed that they are going to rip it out. Not in this case. The bill is published, we are looking for some of these things and find they are gone. Then they wonder why there is opposition to the bill.

Then he talks about the hours we spent together working as the Group of 6. I appreciate him mentioning the hours, but hours don't make any difference if ideas aren't taken. The purpose of the hours is to be able to express ideas that can be included in a bill. Just getting to express them isn't enough. To make them bipartisan, they have to be included. Anybody who looks at the things we have on our Web sites would understand that we did have some good ideas, some things that would make a change in the way we do health care in America. Are those in this bill? No.

This is the Reid bill. This wasn't put together by the HELP Committee or the Finance Committee, although significant parts of both of those bills, which we didn't have input into, are a part of it. How was that designed? That was designed behind closed doors right over there, with no Republican input whatsoever. How does that make it bipartisan? How does that even give us a chance to make it bipartisan? Then they wonder why we have amendments.

Here is a fascinating thing on amendments: In the HELP Committee, the Democrats presented more amendments than the Republicans did. The Republicans did get two that we voted on and passed. The Democrats had over 30 that they presented to get passed. How come they even had to put in amendments? It was their bill. We are facing the same thing with the bill that is on the floor here. They are putting in more amendments than we are. Every time we put in an amendment they have a side-by-side on it to give them some cover to say, well, what they said wasn't that important. It wouldn't make a difference. Besides that, we don't want to do it, so we will have something that says we voted for that concept.

If you put the bill together, you shouldn't be the ones filibustering and doing the amendments. They have a unique position here now. We have a Democratic amendment and a Democratic side-by-side. I don't remember ever seeing that before. But we had a request this morning for three Democratic votes and one Republican vote. That is real bipartisanship? Yet they want the cooperation.

The thing that upsets me the most is they keep saying this will save money, this bill is going to save the country money, and we are in this appropriations process and we ought to be interested in saving the country money. But CBO didn't say that. CBO did not say that this bill will save money, unless you use a whole bunch of phony accounting, and there is phony accounting in this bill. That is how they are able to say, Oh, yes, we save money. We save money. This is going to save the American people a lot of money. No, it does not. Do not buy that story. Look at the accounting. I am the accountant. I have taken a look at it, but I am not that good of an authority.

We just got the report from the CMS chief actuary. Yes, that is the actuary who is actually in charge of Medicare and Medicaid and he did an analysis on it. I am going to go into some more detail on that analysis, because he says this bill does not save money. This bill will cost seven-tenths of 1 percent more than if we did nothing. Is that health care reform?

And where is the transparency we were promised would happen under this administration? Transparency? They built the bill behind the closed doors over on that side of the Senate Chamber and now a significant part of the bill—which is called the public option, government option, government-run program, whatever you want to call it—has been drastically changed. The newspapers have written about it. People have seen it. But the newspapers haven't seen what is in there. The Democrats, according to Senator DURBIN, the majority whip, have not seen that bill. The only one who has seen it is Senator REID and the Congressional Budget Office. He is not going to disclose any of that—any of that—until after he sees what the score is going to be. That is the ultimate in transparency, in my opinion. If you think you have a good idea, maybe you ought to let people see what the score is and see what the bill is, and you ought to if you expect us to debate it in a hurry. That is what we are under, this hurry-up situation. Hurry up so a bill that isn't going to do anything until 2014 can be passed by Christmas.

This side is ready to reform health care. This side is ready to stay in through the weekend. We already stayed in through last weekend. We will stay in until Christmas. We will stay in the days after Christmas. We will stay in next year. But it has to be right. The American public expects this to be right.

There has never been a major piece of legislation passed by this body in the history of the United States that was passed by one party. Not yet, there hasn't been. There is a good reason for that. It is full of flaws if just one side's ideas are incorporated in the bill, and this is no exception. This has a lot of flaws. This is a real move to the left to incorporate most of the people over there, but they weren't able to incorporate all of them, so now they are doing a secret public option to expand Medicare to distract people without telling them what is in it and expecting us in a few days to vote on this thing.

Well, I am going to share some of these numbers from the CMS chief actuary a little later, but I see my colleague is here and is actually going to talk mostly on the appropriations bill. I will say that what I have had to say ties in directly to appropriations. It is spending money. We are going to spend $464 billion of Medicare money from a system that is going broke and we are going to raise taxes—that is kind of an appropriation too—to cover the other $½ trillion in new programs that are not going to lower premiums or save the United States money, according to the CMS Chief Actuary Rick Foster.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I wish to thank Senator ENZI for not just what he said today but for what he has been doing throughout this whole debate to make very complex issues much simpler so that people can listen in to what is being said here and understand what we are doing. It has been a frustrating process here dealing with this attempted government takeover of health care. While the majority has us here on the floor debating one bill, they are behind a closed door over here creating a whole new bill and making periodic announcements about what might be in it. It is kind of like a magician who gets you looking at one hand while the sleight of hand is actually doing the magic with the other hand, and that is what we see happening here today. The majority wants to force this major piece of legislation through before Christmas while people aren't paying attention.

In the middle of this, they have decided to take a break to expand spending at unprecedented levels. I am here right now to support Senator MCCAIN's rule XXVIII point of order that points out that the majority, the Democratic majority, has violated all of these so-called ethics and transparency improvements that they were bragging about only a year ago. We are not supposed to take bills and in the secret of conferences add things that weren't in the House or the Senate version. That violates a specific rule, an ethics rule that the majority trumpeted not too long ago. This bill contains out-of-control spending. It completely reverses Congress's traditional position on many values issues such as taxpayer-funded abortions and needle exchanges in the District of Columbia. It ends the DC Opportunity Scholarship Program that has done so much to help a small number of disadvantaged minority students. It increases funding for Planned Parenthood, the Nation's leading provider of abortions, and it legalizes medical marijuana. Yet the overall funding levels of this bill are unconscionable at a time when we are in recession and so many people are out of work. We have massive debt that threatens our Nation's economic future and our very currency itself.

The bill represents a $50 billion increase or 12.5 percent over last year's funding level. This is not mandated spending; this is discretionary spending. This is a time the President is saying we have to get a handle on our debt. Yet every bill the Democratic majority has pushed across this floor has major increases in spending. It is actually nearly a $90 billion increase over the year before.

Mr. President, what the President said he was against, which was earmarks, this bill has 5,224 earmarks, costing nearly $4 billion, in addition to the other spending. I cannot read all of those, but I think people across the country have learned what earmarks mean. Here are a few examples:

$500,000 for construction of a beach park promenade; six different bike paths totaling $2.11 million; $250,000 for a trail at Wolftrap Center for the Performing Arts; and $250,000 for the Entrepreneurial Center for Horticulture.

I could go on and on. It makes no sense to be doing this. I think maybe one of the most egregious parts of the bill, which I want to focus on for a few minutes, goes back to those values issues. It is one thing to make abortion legal; it is quite another thing to force Americans who consider abortion immoral, based on their beliefs, or religious beliefs—it is immoral to make them pay for it, to actually promote abortion.

That is what this bill does. Everywhere you turn, this administration is promoting anti-life initiatives and advancing policies that most Americans find morally objectionable—namely, taxpayer-funded abortions. We have seen that throughout this health care debate, and now in the very set of bills that funds our government, it is promoting and funding abortion.

This Nation has had a debate about whether we should even allow abortions to be legal. But we have been in general agreement as a nation, and even here in the Congress, for years that we should not force taxpayers to pay for abortions. That is a terrible use of the power of government.

The omnibus bill reported by the House-Senate conference allows taxpayer funds to be used to pay for elective abortion in the District of Columbia, because Congress controls DC's entire budget, including appropriating the city's local revenues. If this omnibus bill passes, Congress will be allowing U.S. taxpayer dollars to fund abortion on demand, when it was previously prohibited.

This is a major shift in policy. We must step back and see where our priorities are as a nation. The values of our country are at stake in this legislation. As we look at this, I hope no American is so naive as to think that if they pass this government takeover of health care, no matter what we put in the legislation, they will eventually fund elective abortions in this country. It shows everywhere they pass a piece of legislation that they are trying to promote abortion in this country.

A vote for the omnibus is a vote for taxpayer-funded abortion. A vote against Senator MCCAIN's point of order is a vote for taxpayer-funded abortion. It is simple and it is clear. Congress is responsible for the budget and the way the funds are spent. If we don't think the government should create an incentive for taking unborn lives, we should not allow it in the legislation before us today.

In addition to this troubling revelation, the bill contains many other egregious reversals of longstanding policy contradicting traditional American values. The underlying bill legalizes medical marijuana and uses Federal funds to establish a needle exchange program in Washington, DC. Both encourage the use of drugs.

This is another glimpse of what is going to happen with government-run health care. If this Congress is promoting the use of medical marijuana, needle exchange programs, abortion, in this funding bill, does anyone believe that that won't be a part of a government-run health care system? Of course not.

Additionally, this bill eliminates the successful DC Scholarship Opportunity Program, which aids low-income children by giving them scholarships to attend private schools in Washington, DC. This affects only about 1,500 children. I have had a chance to meet with some of them who were in schools that were not working. This small scholarship program allows disadvantaged, primarily minority, students in Washington, DC, to go to a private school of their choice. Remarkably, in just a few years, the students who moved from the government schools to the private schools were 2 years ahead of their peers. It is an example of something that is working, helping disadvantaged students, and it is a good example of an administration that is more interested in paying off union interests—in this case the teachers union—than doing what is good for the children in our country. To eliminate this small, inexpensive program is absurd. But it reveals to you——

Mr. DURBIN. Will the Senator yield for a question?

Mr. DEMINT. No, I won't. It reveals to you the true motives of the majority. If we look at this bill and this eventual health care bill—if we ever have time to see it before they try to pass it—we are beginning to see a real glimpse, a true picture of where this Democratic majority is going.

Finally, this bill increases funding for title X family planning services, of which Planned Parenthood is the largest recipient. Planned Parenthood is the Nation's largest provider of abortions. Increasingly, they are what we call directed abortions. When people come to Planned Parenthood and look for advice on family planning, they are more often than not encouraged and pushed toward abortion.

All around this bill, you see what is going on. It is a major change in policy—not to make abortion available but to make Americans pay for it and to promote it.

I, along with 34 of my colleagues in the Senate, signed and sent a letter to the majority leader regarding the troubling anti-life policies in this omnibus bill. Collectively, we vowed to speak out to protect the longstanding Federal funding limitations on abortion—a belief that has enjoyed broad bipartisan support for many years.

For this reason, as well as a number of other values issues that are irresponsibly addressed in this legislation, I support Senator MCCAIN to raise a point of order against the omnibus under rule XXVIII of the Standing Rules of the Senate. I urge my colleagues to do the same.

I remind my colleagues that a vote against the McCain point of order is a vote to force American taxpayers to promote and pay for abortions. It is plain and simple. I am sure there will be a lot of smoke and mirrors after my talk that will try to convince you that is not true. But it is in the legislation and it will happen. We need to stop it.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I hope the Senator from South Carolina won't leave. He would not yield for a question. I want to address his remarks, and some of them are not accurate. I don't want him to feel that I am saying this outside of his presence.

I ask the Senator from South Carolina, while he has a few minutes, if he could look in the bill and find the provision in the bill that kills the DC Opportunity Scholarship Program. Please present it to me now, because it is not there. It is not there.

The DC Opportunity Scholarship Program is a voucher program, created more than 5 years ago. It was authorized through the Appropriations Committee, not through formal authorization. As many as 1,700 students in DC ended up going to school and getting about $7,500 a year to help pay the tuition for their schools. The program has diminished in size—I will concede that—even though I tried in a debate and negotiations to change that. It is down to about 1,300 students. It is funded in this bill to the tune of $13.2 million.

So for the Senator from South Carolina to stand up and say, as he did, that this program is killed, how does he explain the $13.2 million in the bill?

Mr. DEMINT. If the Senator will yield, the President has said he is going to end this program.

Mr. DURBIN. Does this bill end it?

Mr. DEMINT. I will come to the floor to explain the technical aspects of why it is not.

Mr. DURBIN. I am anxious to hear it. Explain all the technical aspects you would like, but the fact is that $13.2 million goes to the DC Opportunity Scholarship Program. And the 1,300 students currently in the program will be protected and will receive the tuition—a grant of $7,500 per student—in the coming year. That is a fact. To stand there and say otherwise is wrong.

Mr. DEMINT. You grandfather it in—if the Senator will yield for a question, does this bill fund the continuation of the program beyond the 1,300 who are already in it?

Mr. DURBIN. No. It limits the program to 1,300.

Mr. DEMINT. It kills the program then.

Mr. DURBIN. No. If they are why——

Mr. DEMINT. But the program will not continue.

Mr. DURBIN. Reclaiming my time. What happens is this program next year will be up going through the Senate and the House of Representatives. For the Senator from South Carolina to misrepresent the contents of the bill is not fair.

Secondly, this idea of government funding abortion, let me say to the Senator from South Carolina, here are the basic pillars on this controversial issue in America. First, the Supreme Court has said abortion is a legal procedure in Roe v. Wade.

Second, Congress said, through the Hyde amendment, that we will spend no Federal funds for abortion except in cases involving the life of the mother, rape, and incest.

Third, Congress said any provider—hospital, doctor, medical professional—who in good conscience cannot participate in an abortion procedure will never be compelled to do so.

This bill doesn't change that at all. In the Senator's State of South Carolina and in my State of Illinois, the leadership of the States—the Governor and the legislature—decide what they will spend their State funds on. That is done in States across the United States. Seventeen States have decided they will have State funds pay for abortions beyond the Hyde amendment. It is their State's decision, not our decision in DC. We, in this bill, give them the same authority that the State of South Carolina has and the State of Illinois has. No Federal funds from the government, from Congress, can be spent on this exercise or use of funds for abortions beyond the Hyde amendment. But if they choose to use their own funds—just as South Carolina and Illinois make their choice—then they make that decision.

Many in Congress have a secret yearning to be mayors of the District of Columbia. They want to be on the city council—not just in the Senate. They want to make every finite decision for the 500,000 or 600,000 people who live here.

Mr. DEMINT. Will the Senator yield?

Mr. DURBIN. Not at this time. When I finish, I will. The people who live here in DC are taxpaying citizens. They pay their taxes and they vote for President. They send their young men and women off to war just like every State in the Union. I think they are entitled to some of the basic rights we enjoy in each of our own States.

I also want to say a word about the needle exchange program. I get nervous around needles. I don't like to run in to the doctor and say give me another shot. So taking an issue like this on is not a lot of fun to start with. Why are we talking about needle exchange programs in the District of Columbia? For one simple reason: The HIV/AIDS infection rate in the District of Columbia, Washington, DC, the Nation's Capital, is the highest in the Nation. We are living in a city with the highest incidence of needle-related HIV/AIDS and meningitis and other things that follow. A needle exchange program says to those who are addicted: Come to a place where they can at least put you in touch with someone who can counsel you and help move you off your addiction, and they will give you a clean needle instead of a dirty one. I hate it, and I wish we didn't need it. I don't like it. But in States across the Nation they make the decision that this is the humane and thoughtful thing to do to finally bring addicts in before they infect other people and spread this epidemic.

The doctors are the ones who tell us this works. States make the decisions on it. I think the District of Columbia, facing the highest incidence of infection from HIV/AIDS, should also make that same decision in terms of the money they spend. The provision that came over from the House of Representatives would have limited the distribution of this program to virtually a handful of places in DC. We said that DC can make the rules about where the safe places are for these needle exchange programs.

As I said, I hate to even consider the prospect, but I cannot blind myself to the reality that we have this high incidence of infection in the District of Columbia, and the medical professionals tell us this is working. We are bringing addicts in. We are bringing them into a safer situation. We are counseling some of them beyond their addiction. We are saving lives.

Am I supposed to turn my back on that and say, I am sorry, it offends me to think of this concept? It offends me to think of people dying needlessly, and that is why we have this program.

Let me say a word about the DC Public Schools. I did not ask to take this DC appropriations bill on. This is not something I ran for in the House of Representatives or the Senate. But it is part of my responsibility. This is a great city with great problems, but there are some shining lights on the horizon, and one of them is Michelle Rhee, chancellor of the public school system in the District of Columbia.

Michelle is an amazing story of a young woman attending Cornell University. She decided, when she graduated, to sign up for one of the top employers of college graduates in America today, Teach for America. She went off and taught in Baltimore. She took a hopeless classroom situation and in 2 years turned it around. Kids from the neighborhood had test scores nobody dreamed of because of Michelle's skill. She worked in New York, bringing nontraditional teachers into the teaching situation and then was asked to be chancellor here.

She is working on an overall reform for the DC Public Schools, which I endorse. It is a reform which will move us toward pay for performance, where those teachers who do a good job and improve test scores are rewarded. It is a voluntary program for teachers. The results are starting to show. This week in the District of Columbia, they reported math scores that showed dramatic improvements compared to cities around the Nation.

She has another responsibility: while 45,000 kids are in the public schools of DC, 28,000 are enrolled in public, but independent, charter schools. The charter schools have to match the performance of the public schools or improve upon them. It is the same for the voucher schools, the DC opportunity scholarships.

The Senator from South Carolina stands before us to say I eliminate the program. Where does that $13.2 million go? It goes to the program, the DC opportunity scholarships. I did change the program. I changed the program because I failed initially when I offered amendments.

Here are some of the changes I made, and you be the judge as to whether these are unreasonable changes.

I said for the voucher schools—half of them are Catholic schools—I said for the voucher schools, every teacher in basic core subjects has to have a college degree. How about that for a radical idea, a teacher with a college degree? It is now required. It was not before.

Second, the buildings they teach in—these DC voucher schools have to pass the fire safety code. Is that a radical idea killing the program? If it means closing a school that is dangerous, sure, I would close that school in a second before I would send my child or grandchild there.

Third, we said, if you attend a DC voucher school, the students there have to take the same tests as the DC Public Schools so we can compare how you are doing. If you take a different test, you have different results. We are never going to have a true comparison.

I also added in here, at the suggestion of Senator LAMAR ALEXANDER of Tennessee, a former Secretary of Education, that each of the DC voucher schools either has to be accredited or seeking accreditation. I don't think that is radical. I don't think it closes a program.

The final thing I say is, the people who administer this program have to actually physically visit the school at least twice a year. We had a hearing where the administrator of the program was shown pictures of some of these DC voucher schools and, frankly, he said: We have not been there. Maybe once a year we get by. It has to be more than that. We have to make sure these schools are functioning and operating. We are sending millions of Federal dollars into them. We expect it at public schools, we expect it at charter schools. Should we not ask the same of the DC voucher schools?

I say this, at least those in the Archdiocese of Washington agreed to these things and have said: For our Catholic schools, we are ready to meet these standards and tests. My hat is off to them. It is a challenge, I am sure, but it is one I think they will meet. I want them to continue to do that.

I did try to expand this program in one aspect in the course of our negotiations, with Senator COLLINS' assistance, so siblings would be allowed to attend this program. I think it would be helpful. We were not successful. There are those opposed to this altogether.

I say the Senator from South Carolina has mischaracterized the DC voucher program. He has not fully explained that we have not changed the Hyde amendment, which prohibits Federal funds for abortion purposes, other than strict narrow categories. He went on to say something about the needle exchange program, which does not reflect the reality and the gravity of the health crisis facing the District of Columbia.

This is not a radical bill. This is a bill which I think is in the mainstream of America. It is a bill consistent with the same laws that apply in his State of South Carolina and my State of Illinois and most other States across the Nation.

I wish we were not in this paternalistic position in relation to the District of Columbia. I would rather this city had home rule, had its own Members of Congress, could make its own decisions. That is my goal. I would like to see that happen. In the meantime, I think we should treat the people who live here fairly, give them a chance to deal with their significant problems, acknowledge success, as we just reported in the public schools, and try to help them where we can.

This is, in fact, a great city and the capital of a great nation. I think the mayor does a good job.

I reserve the remainder of my time.

Mr. ENZI. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming has 8 minutes 26 seconds. The Democrats have 7 minutes 30 seconds.

Mr. ENZI. Mr. President, I rise to discuss a new report on Senator REID's health care reform bill. This kind of fits in with the appropriations that deal with Health and Human Services that is over 2 months past due.

Last night, we received a new analysis of the Reid bill we have been discussing about 11 days straight, performed by the Center for Medicare and Medicaid Services—that is CMS—which is under the Department of Health and Human Services. The chief actuary, Rick Foster—this is the guy in charge of all this. He is the chief actuary. This is not somebody outside the system. This is the guy who has to answer for all this. He serves as the independent technical adviser to the administration and Congress on estimating the true costs of health care reform. Some of the findings in this report directly contradict some of the claims we heard this week about the Reid bill.

For a week now, we have heard how the Reid bill will help slow spending growth and reduce how much we as a nation spend on health care. Mr. Foster's analysis shows that statement is false.

According to this report, national health expenditures will actually increase by seven-tenths of 1 percent over the next 10 years. That is seven-tenths of 1 percent if we did nothing different. Despite promises that the bill would reduce health care spending growth, this report shows the Reid bill actually bends the health care cost curve upward.

We have also heard, over the past week, how this bill will reduce health insurance premiums. Again, the administration's own chief actuary says this is false. The new report describes how the fees for drugs, devices, and insurance plans in the Reid bill will increase health insurance premiums, increasing national health expenditures by approximately $11 billion per year.

We have also heard how the Reid bill will reduce the deficit, extend the solvency of the Medicare trust fund, and reduce beneficiary premiums. According to the Foster report, these claims are all conditioned on the continued application of the productivity payment cuts in the bill which the actuary found were unlikely to be sustainable on a permanent annual basis. If these cuts cannot be sustained, one of two things will happen. Either this bill will dramatically increase the deficit or beneficiaries will not be able to continue to see their current doctors and other health care providers.

In reviewing the $464 billion in Medicare cuts in the Reid bill, the Foster report found these cuts would result in providers finding it difficult to remain profitable.

The report went on to note that absent legislative intervention, these providers might end their participation in the Medicare Program. In addition, if enacted, the report found that the cuts would result in roughly 20 percent of all Part A providers—that is hospitals, nursing homes, et cetera—becoming unprofitable within the next 10 years as a result of these cuts.

As a former small business owner myself, I understand the impact this will have on doctors, hospitals, and other health care providers. In rural areas, such as my State, these providers will go out of business or have to refuse to take any more Medicare patients.

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He said the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients. That is what we have been saying for about 11 days.

The Reid bill also forces 18 million people into the Medicaid Program. The Foster report concluded this will mean a significant portion of the increased demand for Medicaid services will be difficult to meet. These are not the claims made by insurance companies or anyone who might have a vested interest in the outcome of the debate. These come directly from the administration's own independent actuary.

In light of this report, why are the sponsors of this bill continuing to argue for a $2.5 trillion bill of new programs which will increase health care spending, drive up premiums, and threaten the health care of Medicare beneficiaries?

We can do better. We need to start over and develop a bipartisan bill that will address the real concerns of American people—develop a bipartisan bill. They cannot just exclude one side because there is a majority that won the election and gets to write the bills. We get tired of hearing that told to us. Where is your comparable bill? We are not trying to have a comparable bill, we are trying to have input into the current bill or the current bills: Sit down, talk about the principles, find the actual things that fit into those principles, develop the details, and have a bill that goes step by step so we get the confidence of the American people. The step we ought to start with is Medicare. That is why I present this report from the actuary of CMS, which is part of the Department of Health and Human Services, which is assigned most of the job of coming up with the details of the bill we have before us. That means actual elected officials would not be doing it. But this CMS actuary says everything that has been said by that side of the aisle is false unless there is some phony accounting that goes into it.

I yield the floor and reserve the remainder of our time.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that we divide the time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, Division F of this omnibus conference agreement provides funding for the State Department, Foreign Operations, and related programs.

I want to thank the ranking member of the subcommittee, Senator GREGG, and his very capable staff, Paul Grove and Michele Wymer, for once again working with me and my staff in a bipartisan manner to produce this conference agreement.

I also want to thank Chairwoman NITA LOWEY and Ranking Member KAY GRANGER, and their staffs, for working so cooperatively with us throughout this process.

The fiscal year 2010 State Foreign Operations conference agreement provides $48.8 billion in discretionary funding, a $3.3 billion decrease from the President's budget request of $52 billion.

The bill is $1.2 billion below the fiscal year 2009 level, including supplemental funds. This is an important point that needs to be understood by all Senators, because yesterday a Senator on the other side of the aisle criticized this bill for being 31 percent above fiscal year 2009.

That is misleading, because it does not account for the billions of dollars in fiscal year 2009 ''emergency'' supplemental funding that was the standard way of doing business under the previous administration.

To ignore those costs to American taxpayers is disingenuous. President Obama has made clear that he intends to fund these programs on budget, not through supplemental gimmicks. That is what the Congress urged him to do, and now he is being criticized for doing so.

If you compare apples to apples, this bill provides $1.2 billion less spending than in fiscal year 2009.

Some Republican Senators have made speeches against this omnibus package on account of earmarks they don't like, even though some of them requested their own earmarks. In fact, earmarks comprise a tiny fraction of the total package.

Like past years, the State-Foreign Operations conference agreement does not contain any earmarks as defined by the Appropriations Committee.

We do fund many programs that are priorities of Democrats and Republicans, including assistance for countries like Afghanistan, Pakistan and Iraq, and longstanding allies like Israel, Egypt, and Jordan.

In addition, the conference agreement provides $5.7 billion to combat HIV/AIDS, including $750 million for the Global Fund. Funds are provided to combat other diseases, like malaria, tuberculosis, and neglected tropical diseases,

The agreement provides $1.2 billion for climate change and environment programs, including for clean energy programs and to protect forests.

The agreement provides $1.2 billion for agriculture and food security programs, with authority to provide additional funds.

There are provisions dealing with corruption and human rights, funding for international organizations like the United Nations, NATO and the International Atomic Energy Agency, and to promote democracy, economic development, and the rule of law from Central America to Central Asia.

The conference agreement provides the funds to support our embassies and diplomats around the world, public diplomacy and broadcasting programs, the Peace Corps, and many other programs that promote United States interests.

I don't support everything in this omnibus package any more than anyone else does. I had hoped, as I know did Chairman INOUYE and Vice Chairman COCHRAN, that we could have brought each of the bills in this omnibus, including the State-Foreign Operations bill, to the Senate floor individually.

But a handful of Senators on the other side have made clear that they will do whatever is procedurally possible to slow down or prevent consideration of these bills.

Despite that, I can say that the State Foreign Operations conference agreement was negotiated with the full participation of both House and Senate chairmen and ranking members. It was in every sense a collaborative process.

It is a balanced agreement and should be supported by every Senator who cares about U.S. security and the security of our allies and friends around the world.

The PRESIDING OFFICER. The question occurs on agreeing to the motion to waive all applicable sections of rule XXVIII. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from Texas (Mrs. HUTCHISON), and the Senator from North Carolina (Mr. BURR).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''Nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—60

Akaka	Feinstein	Mikulski
Baucus	Franken	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Pryor
Bond	Inouye	Reed
Boxer	Johnson	Reid
Brown	Kaufman	Rockefeller
Burris	Kerry	Sanders
Byrd	Kirk	Schumer
Cantwell	Klobuchar	Shaheen
Cardin	Kohl	Specter
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Cochran	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	Wyden

NAYS—36

Alexander	Feingold	McCaskill
Barrasso	Graham	McConnell
Bayh	Grassley	Murkowski
Bennett	Gregg	Risch
Brownback	Hatch	Roberts
Chambliss	Inhofe	Sessions
Corker	Isakson	Shelby
Cornyn	Johanns	Snowe
Crapo	Kyl	Thune
DeMint	LeMieux	Vitter
Ensign	Lugar	Voinovich
Enzi	McCain	Wicker

NOT VOTING—4

Bunning	Coburn
Burr	Hutchison

The PRESIDING OFFICER. The yeas are 60, the nays are 36. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I ask unanimous consent that no further points of order be in order during the pendency of H.R. 3288.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. It is my understanding that the next vote will be tomorrow morning at 9:30. We will be happy to come in at 8:30, but I ask unanimous consent if we could have that vote at 9:30. We will come in at 9, if that is OK with everybody.

Mr. MCCAIN. Will the majority leader yield for a question?

Mr. REID. I am happy to.

Mr. MCCAIN. And the disposition of the pending Dorgan amendment, could we have some idea about that?

Mr. REID. I think my friend from Arizona asks a very pertinent question. We offered a consent request last evening—and I did again today—that we would have the votes now before the Senate in sequential order. I offered a unanimous consent request to do that. We are happy to do that. I announced there would be no more votes today. On Monday when we come in, we will be happy to do that.

Mr. MCCONNELL. I say to my friend the majority leader, the problem with that is we have been going back and forth with an amendment on each side, and the agreement that you have proffered, if I understand it correctly, basically had two Democratic side-by-sides. Am I not correct in my understanding of that?

Mr. REID. Yes, but on all amendments that we have had up to this point, every side, Democrats or Republicans, has had the opportunity to do side-by-sides if they wanted to. In the weeks we have worked on this, what has transpired here, I am quite sure, has happened before. Simply stated, we have been requested by Republicans to have some votes, and we have agreed to have the votes. I explained in some detail last evening why we can't do it on a piecemeal basis. Procedurally, it puts us into a quagmire. Let's clear the deck. There will be other amendments after that we would certainly try to have each side offer.

But I agree with the Senator from Arizona, we should get rid of the drug reimportation amendment one way or the other, in addition to the motion offered by Senator CRAPO.

Mr. MCCONNELL. My point was, typically a side-by-side is offered one on each side. On the drug reimportation issue, you have basically two votes, both generated on the Democratic side, which created some confusion. But we will have to continue to talk about this and see if we can work our way through it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I wanted to ask the minority leader—some of us are a little bit perplexed. I know the Senate has its rules, and we try to work through them. But we also at this time of year often try to accommodate families and schedules and so forth. I am curious as to whether the minority leader might not consent to allowing us or why it is that we couldn't, since Senators are here today, schedule the vote and agree to have the vote on the 60-vote margin today rather than tomorrow morning, requiring all staff and everybody in the Senate to come in on a Saturday.

Mr. REID. If I could make a comment before my friend the Republican leader comments, everyone should understand—this should make it easier for everybody—I am going to be home all weekend in Washington. I won't be traveling the country doing any fundraisers that people seem to be afraid of.

Mr. MCCONNELL. The answer to it is that our good friend the majority leader told us on November 30 we would be here the next two weekends. He said again this past Monday we would be here this weekend. I assumed and I know he certainly meant what he said. Our Members are here and ready to work. We wish to work on health care amendments. But as a result of the privileged status of the conference report that is before us, we have had that displaced. But I think everybody was on full notice as to what the work schedule was going to be for last weekend and this weekend.

Mr. KERRY. Mr. President, if I could respond, I don't mean to assert myself in any way that is inappropriate with respect to the leader, but we all know that in the workings of the Senate, what we are doing is both complicated and serious and critical to the country.

We are waiting for CBO to appropriately, consistently—as a member of the Finance Committee, we adhered to a very strict notion that we would try to find the precise modeling and cost of whatever it was we might do. It is entirely appropriate, to have a proper debate or discussion, that we know exactly what the cost is of any particular proposal. That is what we are waiting for. So the majority leader is appropriately trying to move another piece of legislation that is ripe, that is important to the country. This is just a question of courtesy to Senators and to their families and to the staff of the Senate who have been working extraordinarily hard. The question is simply, why, as a matter of convenience, we couldn't schedule a vote for today instead of being scheduled for tomorrow. We could do that by unanimous consent.

Mr. REID. If I could have the RECORD reflect, the Republican leader is right. I said we would be in session the next several weekends. But if you go back and look at the RECORD, how many times have I said we would be in session over the weekend and, interestingly enough, around here, magic things happen on Thursdays and Fridays. I have had every intention, as I have every time I have said it, that we should be in on a weekend, and usually we are able to work something out. We haven't been able to this time. I accept that. I am not complaining. But certainly the question of my friend from Massachusetts is a pertinent one. Senators are here now. Maybe we could have the vote early. But it is set statutorily. My unanimous consent request was, and I am not sure it was responded to, that we could have that vote at 9:30 tomorrow morning without having the mandatory 1-hour beforehand.

I heard no objection to that. We will just come in at 8:30. We will come in at 8:30 tomorrow morning and have a 9:30 vote.

Mr. KERRY. Mr. President, I ask unanimous consent that the vote scheduled for tomorrow morning be held instead today at some convenient time within the next hours.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object—and I will object—we have been told by the majority that the single most important thing we could do would be to work on weekends and try to pass this health care bill which, according to the CNN poll that came out last night, the American people oppose 61 to 36, before Christmas. We are here. We are prepared to work. We would like to get back on the health care bill as rapidly as possible and vote on amendments to the bill. It either is or it isn't important enough for us to be here before Christmas. My Members are not expecting to take a break. We have been told by the majority all year long this is important. First we had to get it done before August. Then we had to get it done before Thanksgiving. Now we have to get it done before Christmas. We are here, ready to work.

I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Hampshire.

Mr. GREGG. Is the Senator from Arkansas seeking recognition?

Mrs. LINCOLN. Yes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. GREGG. Mr. President, I still have the floor. I was just asking a question.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. Mr. President, I ask unanimous consent to be allowed to speak for up to 10 minutes and then that the Senator from Arkansas be recognized, and then we will come back to this side.

The PRESIDING OFFICER. Is there objection?

The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, reserving the right to object—and I have no intention of objecting—I would like to also propound a unanimous consent request that after the Senator from Arkansas has spoken and after the Senator from New Hampshire has spoken, Senator COLLINS, I, and Senator BAYH be recognized for up to 30 minutes for a colloquy.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

The majority leader is recognized.

Mr. REID. Mr. President, reserving the right to object, I would ask my friend from Oregon if he would allow this modification to his unanimous consent request. It would be as follows: consent that Senator LINCOLN be recognized and that she be allowed to speak for up to 10 minutes; that Senator GREGG be recognized for up to 10 minutes; and then that Senators WYDEN, COLLINS, and BAYH be permitted to engage in a colloquy for up to 30 minutes; that following the conclusion of that 30 minutes, Senator ALEXANDER or his designee be recognized for up to 30 minutes to engage in a colloquy with other members of the Republican caucus.

The PRESIDING OFFICER. Is there objection?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, reserving the right to object, I understand that is in addition to Senator WYDEN's request, which is that I should begin with my first 10 minutes, then we would go to the Senator from Arkansas, then we would go to Senator WYDEN, and then we would go to the outline as represented by the majority leader.

Mr. REID. If that is OK with the Senator from Arkansas.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, thank you very much.

Mr. President, I rise to speak a little bit about this health care bill. I know there has been a lot of discussion of it already today, but I think it is important—very important—that as this health care bill comes forward, we know what it says.

Unfortunately, we received this 2,074-page health care bill about 8 days ago, after it had been worked on for 8 weeks in camera, behind closed doors by the Democratic leadership. We have only had 8 days to look at it. We now hear there is going to be a massive revision of it—a massive revision—that is going to involve potentially expanding Medicare to people who are aged 55.

Medicare is already broke, by the way. It is broke. It has a $38 trillion unfunded liability. And we are going to add another 10 million people, maybe, into Medicare? That makes no sense at all.

But what I think is important is that what we know so far has been reviewed by a lot of different people, but some of them have not been all that objective. So there was a request made to CMS, which is an arm of the administration—therefore, one would presume it was not necessarily biased toward the Republican side of the aisle; in fact, maybe just the opposite; I do not think it is biased at all, hopefully; but if there was bias here, it certainly would not be Republican—to review the proposal of Senator REID.

Let me read to you what the CMS conclusion is—some of them—on the Reid bill.

According to the CMS Actuary: ''The Reid bill increases National Health Expenditures'' by $234 billion during the period 2010 to 2019. Why is this important? Well, it is pretty darn important because we had representations that the purpose of this health care reform was to decrease, to move down, health care costs. Now we find this bill, as scored by the CMS Actuary, significantly increases the national health care expenditures.

Secondly, they concluded that ''the Reid bill still leaves an estimated 24 million people . . . uninsured.'' Twenty-four million people—that is almost half of the uninsured today. Why is that important? We were told the purpose of this health reform exercise was to, one, insure everybody; two, bend the health care costs down; and three, make sure that if you have your own health care that you like, you do not lose it. Well, on two counts, it appears the Reid bill clearly fails that test and gets an F—on the issue of bending health care costs down and on the issue of insuring everyone, according to CMS, an independent group.

Third, it says:

The new fees for drugs, devices, and insurance plans in the Reid bill will increase—

Increase—

prices and health insurance premium costs for customers. This will increase national health [care] expenditures by approximately $11 billion per year.

So instead of bringing health premiums down, as was represented by the President—he said it was going to go down by $2,100 per family—your health care premiums are going to go up. What happens when health care premiums go up? People stop giving you health care insurance because they cannot afford it. Employers cannot afford it. So on the third issue, will you lose your health insurance if you like it, yes, you will. Yes, you will because the price of your health insurance is going to go up under the Reid bill.

There are a couple other points they make which are fairly important here:

The actuary's analysis shows that claims that the Reid bill extends the solvency are shaky.

They are ''shaky''—the claims that it extends the Medicare trust fund solvency.

Quoting further:

Moreover, claims that the Reid bill extends the Medicare HI Trust Fund and reduces beneficiary premiums are conditioned on the continued application of the productivity payment adjustments in the bill, which the actuary found were unlikely—

That is their concept, ''unlikely''—

to be sustainable on a permanent annual basis. . . .

So the idea that this bill somehow assists Medicare—by the way, this bill cuts Medicare by $½ trillion, almost, in the first 10 years. When it is fully implemented, it cuts Medicare by $1 trillion in a 10-year timeframe, and over the next 20 years, it cuts Medicare by $3 trillion. The idea that this is going to somehow help Medicare is fraudulent on its face, according to the Actuary. ''Fraudulent on its face'' is my term. It is ''unlikely'' to accomplish that.

Then it goes into this issue of the CLASS Act, which we have heard so much puffery about how wonderful this CLASS Act is, which is basically another Ponzi scheme, as it was described by the chairman of the Budget Committee, not myself. The Actuary said:

The Reid bill creates a new long term insurance program (CLASS Act) that the CMS actuaries found faces ''a very serious risk''—

This is their term, "a very serious risk"—

of becoming unsustainable as a result of adverse selection by participants. . . .

In other words, only people who are probably going to need long-term care are going to opt into this program. So this plan will basically not be able to pay the costs of the benefits it is proposing because they will not have funds coming in to support the people who need it because there will be no larger insurance pool of healthy people who are using the program. Only the people who need the program will use it. So the CLASS Act representations we have heard around here have been debunked by this CMS report.

This is not our side saying these things. It is not our side saying that the cost of this bill will drive up the cost of national health care. It is not our side saying there are 24 million people left uninsured when this is fully implemented. It is not our side saying premiums will go up when this bill is fully implemented. It is not our side saying the CLASS Act will be a seriously unsustainable program. It is not our side saying Medicare will not be benefited by this program. In fact, it will be negatively impacted by this program. It is CMS saying that, an independent Actuary—not that independent; an arm of the administration. The administration's Actuary is saying it, not our side. So I think it is legitimate to have some serious concerns about this bill.

The CMS report goes on and says:

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

Now, that is serious. That is serious.

It found that roughly 20 percent of all Part A providers—hospitals—would become unprofitable—20 percent of all Part A providers, such as hospitals, would become unprofitable within the next 10 years as a result of the proposals in the Reid bill.

Well, I know "profits" is a bad word on the other side of the aisle, but the simple fact is, if you do not have profit in a hospital, the odds are pretty good you are going to go out of business. You are going to go out of business because you cannot pay the costs of operating that hospital. Even nonprofits have some sort of cushion in order to make it through. Now we have the CMS Actuary telling us that 20 percent of the hospitals in this country are going to go into a negative cashflow and are going to become unprofitable as a result of what this bill proposes.

Well, colleagues, Senators, why would we vote for a bill which increases the cost of health care for the country and does not bend the health care cost down, which leaves half the people in this country who are uninsured still uninsured, which raises the premium costs for Americans, which puts the Medicare system at risk, which will put hundreds of providers at risk, hospitals, and which creates a brandnew entitlement which is not sustainable? And those conclusions are come to by the CMS, the independent CMS Actuary. Why would we want to put that type of program in place? Of course, we should not.

Listen, this 2,074 pages of bill—it was put together haphazardly. It was just sheets of paper stuck together. It ends up costing us $2.5 trillion overall. Every page costs us about $1 billion. Obviously, it was not well thought out because the CMS Actuary looked at it and said it is not well thought out. It does not accomplish its goals.

So rather than moving forward with the bill, why don't we just step back and start doing things we know are going to work? Why don't we start doing a few things around here we know are going to work?

I know the Senator from Oregon is on the floor, and he happens to be the sponsor of a bill which actually would make some progress in the area. Why don't we—I would be willing to step back and start from his bill because his bill at least makes sense. If it were scored by the CMS Actuary, it would not come out like this. They would not be saying that people would be uninsured, that the price of health care was going to go up and that Medicare was going to go into a disastrous strait and create an unsustainable entitlement.

So we have ideas around here that do work or are fairly close or at least have the foundation to work. Why don't we use those rather than this bill? That is my only point. This bill is ill thought out, and that is not my conclusion, that is the only conclusion you can come to when you look at the CMS Actuary's evaluation of it.

Mr. President, I appreciate the courtesy of the Presiding Officer, and I especially appreciate the courtesies of the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, thank you. And I appreciate the courtesies of my colleague from Oregon for allowing me to speak now.

I rise today to talk a little bit about the health care concerns, particularly, in our small businesses. I first wish to compliment and thank my colleagues, particularly Senator LANDRIEU, who is chairman of the Small Business Committee, as well as Senator SNOWE, with whom I have worked for years on the plight of the small businesses in our States and across the country—their need to be able to really access the kinds of competition and choice that allow them to make good decisions and spend their health care dollars more wisely and being able to do what they all want to do in small business, and that is to be able to cover their employees, to make sure their employees and their employees' families are covered with reasonable and meaningful health insurance that actually covers what they need but is at an affordable price. So I thank those women, as well as Senator STABENOW, who I know has also been working on these issues.

But I really come to the floor today to highlight the challenges Arkansas small business owners face in providing quality, affordable health care for themselves, their families, and their employees under the current system and to look at what we can do to improve what their challenges are, what it is they face.

Small businesses are our No. 1 source of jobs in Arkansas, and they are truly the economic engines of our local economies, but they are also the economic engines of our national economy, not to mention learning laboratories for great ideas that will allow us in this great Nation to be truly competitive in the 21st century.

Arkansas's nearly 250,000 small business and self-employed individuals make significant contributions to our State's economy and generated $7.2 billion in 2008. Small employers account for 97 percent of the employers in our State, and I would daresay nationally it is somewhere at that same level.

Addressing the needs of small businesses is absolutely critical to any health insurance reform legislation we bring forward.

As I mentioned before, Senator SNOWE and I have worked together for many years to try to address these concerns, talking with small businesses and their advocacy groups to try to figure out what it is we can provide them, just as we provide ourselves as Federal employees the ability to access health insurance that has been negotiated, where people have come together, pooled the resources of all of our risks as Federal employees—all 8 million of us—to really get a better deal in the marketplace.

We want to be able to allow small businesses to do the same, to come together nationwide, pool themselves in their State exchanges, and be able to really take advantage of sharing their assets and their risks in the health insurance marketplace and get the best possible product they can.

Those small businesses that are able to afford health care coverage for their employees in today's world continue to experience skyrocketing costs, jeopardizing our States' and our Nation's competitive edge, both among themselves nationwide domestically but also internationally. We find that our small businesses are finding themselves more and more in the situation of having to be competitive globally to be able to do the business they do and to create the jobs they need to create.

Yesterday, I spoke with a radio station owner from Wynne, AR, in Cross County, who said high costs have threatened his ability to be able to provide coverage for his employees. Or, worse, skyrocketing costs are forcing business owners to consider giving up their businesses altogether, like the small business owner from Malvern, AR, who wrote me that he was giving up his 17-year-old business because he can no longer afford his rising health care insurance premiums. His wife and his daughter each have a preexisting medical condition, and he feels pressured to find a new job that provides affordable employer-sponsored coverage for his family.

I heard from another small business owner in Mena who told me that at the age of 65, he continued to keep himself on his own small business's health insurance plan in order to ensure that he could maintain providing health insurance to his employees, many with whom he grew up. They were friends of his from grade school or church and community services and other places where he had built lifelong relationships, not only as an employer and an employee but as part of a community. Being able to maintain providing that to them was so critical to him that he was willing to ante up.

I have heard from small business owners from all across my State who desperately want to offer health care coverage for their employees, but it is simply not cost productive. The fact is, so many people think small businesses just want to opt out, that they don't want to provide health insurance, but they do. They do because it is important to them as a part of that community to do something for their employees who also happen to be their friends and neighbors. They also want to make sure their business is the best it can be, and in order to do that they have to compete for those skilled workers. Getting the best workers means providing good benefits, with health care being at the top of that list.

Another Arkansan asked me to please include the self-employed in my efforts to secure affordable health care. There are many small businesses with only one employee, and health care under this scenario is extremely expensive. They are put in an individual market where they are rated against themselves in many instances and not given the benefit of what we enjoy as Federal employees; that is, pooling ourselves together, adding our assets and our risks together so that we can mitigate that risk among all 8 million Federal employees.

These are just a few of the stories I have heard from Arkansans, and that is why in every Congress since 2004, I have introduced legislation to help small business owners afford health coverage for themselves, their employees, and their families. Several of my provisions are already included in the health insurance reform bill currently before the Senate, including the tax credit to help small businesses afford coverage, and we want to improve upon that. Also included are insurance exchanges through which consumers can compare insurance plans side by side so that they will be able to choose the option that is best for them, allowing their employees to see what is available to them and making sure that they are having access to all the options of the marketplace. There are reforms that force insurance companies to change the way they do business by limiting what an insurer can charge based on age and by banning the practices of denying coverage based on preexisting conditions or increasing rates when customers all of a sudden get sick.

We look at our small businesses and, yes, there are a lot of young entrepreneurs, but a lot of our small businesses are those individuals in that category above 55. These are people who, unfortunately, are starting to see chronic disease challenges in their life as they age. Unfortunately, they become an issue, or certainly their coverage becomes an issue when we talk about preexisting conditions. So it is critical that we make sure we change the way insurers do business as usual today and make sure they are playing fair with the small business entities out there.

Just one more of my efforts is something on which we worked with Senator SNOWE and Senator DURBIN, which is to allow that there would be national private insurers, as there are today, but allowing them to sell multistate plans nationwide, to be able to sell their plans in all 50 States. It would be with a strong Federal administrator who would be able to negotiate for quality and affordable coverage. Some of this has emerged as another potential part of the framework for national health insurance reform that can help us achieve our goals of more choices and more affordability for consumers, particularly those in the small business marketplace.

So I wish to thank the Presiding Officer for the opportunity to share with my colleagues and certainly those Americans out there who are the ingenuity and the engine of our economy. I know my colleague from Oregon has talked so much about choice and competition. It is so important, more important than ever in that small business marketplace and in that individual marketplace, as well as providing exchanges and the ability for national insurers, private insurers to be able to provide these types of products across all 50 States. Also, a multistate plan gives our small businesses and our self-employed, our individual marketplace, our independent contractors, such as our realtors and others, the ability to have access to greater choice, greater competition in that marketplace, and, therefore, a better product—greater, more meaningful coverage at a more reasonable cost, and that is what we want to see. More importantly, that is what our small businesses want to see.

So I thank the Presiding Officer, and I yield the floor to my colleague from Oregon and my colleague from Indiana, and the Senator from Maine as well, whom I know will have a great addition to this conversation. Thank you.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Indiana.

Mr. BAYH. Madam President, I wish to begin by complimenting my friend and colleague from Arkansas. We entered this body together, and she has consistently advocated on behalf of small businesses, not only across Arkansas but across the country. We both want to reform the health care system. We know this has a major impact on small businesses. They create most of the new jobs in our society. So if we care about job creation, we need to care about how health insurance costs affect businesses. They are going up too fast, and Senator LINCOLN has consistently advocated for doing what we can to get those cost increases down and, in fact, lower the burden on our small businesses. So this is not only a health issue, it is a jobs issue. She has been a real leader for many years.

So it is a privilege to work with the Senator on these important issues. Our class is doing well.

I also wish to say how much I am privileged to work with my friend from Oregon, Senator WYDEN, who has been one of the most innovative thinkers in the area of health reform. Once again, he is leading the way on an issue I am going to speak to for just a second.

I am happy to see my colleague from Maine is with us. It saddens me to say that, regrettably, this is one of the few examples of bipartisan cooperation where we have come together across the aisle, Democrats and Republicans, working together to figure out how in a practical way we can help solve the problem our country faces.

Here we have an issue of what to do about the 7 percent of Americans who are the individual insurance market but are receiving no subsidies from the government. According to the CBO, they are at risk of having their premiums go up. That is not right, particularly at a time when even people who are making more than $88,000 very often are struggling. So the question is, What can we do about it?

Senator COLLINS, Senator WYDEN, and myself focused on these individuals because we wanted to do what we could, in the words that my colleague from Oregon emphasizes so often, to provide choice and encourage competition to improve both price and quality. That is what our amendments are all about.

I wish to read a very brief statement and then turn it over to my colleagues.

When I go home to Indiana, the health care concern I hear the most about from ordinary Hoosiers, particularly middle-class Hoosiers, is what are we going to do to make their coverage more affordable. Many people in my State already have insurance, but they are struggling to keep up with the skyrocketing increases and the cost of that care.

We began our health care debate and these deliberations in this body this past spring. In mid-October, months into our debate, some of us were struck by the fact that we had not answered the most basic question: How much is this going to cost, and what do we do to bring those costs down? So I, along with some others, submitted in writing that question to the Congressional Budget Office. What will this do for people in the small group markets such as small business owners, what will this do for individuals in the large group markets who work for larger employers, and what will it do for individuals who are out there struggling on their own to provide health insurance for themselves and for their loved ones?

When they released their report, I was pleased to see that the current legislation before us would either contain or lower costs for 93 percent of the American people. For 83 percent of those in small group and large group plans, it is about holding even or modestly lower. For the 17 percent in the individual marketplace, about 10 of that 17 percent get subsidies sufficient to actually bring their prices down, which leaves us with the 7 percent of those individuals in the individual market who get no subsidies and may see serious cost increases if nothing is done. The Wyden-Collins-Bayh amendments accomplish just that.

Our first amendment promotes more health choices for both employers and workers who would otherwise have few, if any, choices. It would help individuals who would be forced to buy their own insurance at higher rates than they currently pay. It would give them the option to purchase low-cost plans that offer essential, basic coverage. It would ensure that Congress does not mandate that anyone buy a more expensive plan than they currently have.

Our second amendment is a market-based reform that would pressure insurance companies economically to lower premiums and penalize them if they try to raise rates before the new exchanges are fully up and running. It would immediately adjust the insurer fee in the bill to give insurance companies a strong financial incentive to keep premiums down. It would do this by making it economically smart for companies to hold the line on overhead and executive salaries and to root out administrative inefficiencies.

Our third amendment would offer vouchers to give consumers who have health insurance but aren't satisfied with it access to more choices to meet their health care needs. It would offer vouchers that individuals could use to shop in the new insurance exchanges we are creating. Those who prefer their current plan to what is offered in the exchange could return the voucher and keep their existing coverage.

If we pass these amendments, we can credibly tell the American people that our long efforts will have addressed rising health insurance premium costs for everyone, and that is at the heart of this effort we have undertaken.

In closing, I will say that Americans are not looking for a Democratic solution or a Republican solution to our health care challenge. They are looking for us to come together to pass a reform bill that works in practical terms in their daily lives. More choices, premium cost increases under control, eliminating preexisting conditions—those are the things that will help middle-class families in my State and others across the country.

I am proud that the Wyden-Collins-Bayh affordability package will represent one of the few bipartisan efforts in this body. As I was saying, I regret the fact that it is one of the few, but I am proud we have come together to work to address this important challenge. I hope my colleagues will agree that we have a responsibility to restrain premium costs for all American families by encouraging consumer choice and robust competition in the private marketplace. I hope we will pass these amendments because they accomplish exactly that.

Madam President, thank you for your patience. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I wish to begin my part of this colloquy with Senator BAYH and Senator COLLINS by thanking my colleague from Indiana. I also thank my colleague from Maine because both senators have said from the very beginning of this discussion that the bottom line for millions of working families, for single moms, for folks who are walking on an economic tightrope across the country, they are going to see this issue through the prism of what it means for them in terms of their premiums and their costs.

Over these many months, Senator BAYH and Senator COLLINS and I have been toiling to put together some bipartisan ideas. We have filed these ideas as a package of amendments, submitted them to the majority leader, Senator REID, and the chairman of the Finance Committee, Senator BAUCUS, and we just wanted to take a few minutes today to talk in particular about why it is so essential that there be a bipartisan effort put together for additional steps to contain costs.

Senator BAYH is absolutely right in describing the Congressional Budget Office analysis. Certainly, many people were fearful the CBO report would come out and say that on day one after enactment premiums would rise into the stratosphere as a result of the legislation. Fortunately, that was not the case in the report for most people.

We also believe there is a whole lot more that can be done. So we have said, Democrats and Republicans are going to try to prosecute that case. What it comes down to is ensuring that, in the text of this legislation, there is more choice and more competition.

The reality is, ever since the 1940s, the days of the wage and price control decisions that have done so much to shape today's health care system, most Americans have not had real choice in the health care marketplace and have not been able to enjoy the fruits of a competitive system. Most Americans have little or no choice. Most Americans don't get a chance to benefit when they shop wisely.

As Senator BAYH noted—and as Senator COLLINS and I have noted over the last few days—that is something we ought to change. It is certainly not a partisan idea. Senator REID and Senator BAUCUS, to their credit, have agreed with me that there ought to be more choice for those folks who have what, in effect, are hardship exemptions under this legislation. There are people, for example, who spend more than 8 percent of their income on health who aren't eligible for subsidies, who have these hardship exemptions; and Senator REID, Senator BAUCUS, and I have agreed they ought to be able to take any help they are getting from their employer in the form of a voucher and go into the marketplace. These people should be able to put into their pockets any savings that come about because they have shopped wisely.

But as Senator BAYH has noted, we have an opportunity to go further. If an employer in the exchange decides, on a voluntary basis, that their workers should have a choice, under the proposal advanced by the Senator from Indiana, the Senator from Maine, and myself, they would be able to do it.

It is the voluntary nature of our idea that Senator BAYH has outlined, an approach that gives more options to both employers and employees, that caused our proposal to win an endorsement from the National Federation of Independent Business.

I ask unanimous consent at this time to have printed in the RECORD that letter from the National Federation of Independent Businesses.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
December 10, 2009.

Hon. RON WYDEN,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS WYDEN AND COLLINS: On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business association, we are writing in support of the Wyden-Collins amendment (Optional Free Choice Voucher—amendment #3117), which provides vouchers as a new voluntary option for employers and employees to purchase health insurance.

For small business, the goal of healthcare reform is to lower costs, increase choices and provide real competition for private insurance. The Wyden-Collins amendment achieves what we know are clear bipartisan goals in healthcare reform—expanding access to coverage, increasing consumer choice and improving portability.

Free choice vouchers recognize that the employer-employee relationship in America has changed considerably since employer-sponsored insurance began in the 1940s. They give employees tax- advantaged resources to tailor healthcare choices and purchases to their own preferences and needs. Because the employees will be able to choose from more policies, they will be more invested in their healthcare decisions. They will be better consumers because they will be more aware of costs, and this will help ''bend the cost curve.''

In today's diverse and highly mobile workforce, people change jobs every few years. Improving portability will reduce the ''job lock'' that currently stifles entrepreneurship. Since free choice vouchers would help make health insurance portable, employees will not be locked into jobs when better opportunities come along.

This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond ''take it or leave it.'' This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups and kill jobs.

While some may claim this amendment weakens employer-sponsored health insurance, NFIB disagrees. The current system works better for larger firms who can operate more efficiently and effectively, and this inequity must be addressed. Simply put, what works for Wall Street does not work for Main Street. The Wyden-Collins amendment works to address this by making coverage more affordable for many of the nation's job creators.

NFIB appreciates your commitment to healthcare reform and your continuous efforts to find solutions that work for small business.

Sincerely,

SUSAN ECKERLY,
Senior Vice President, Public Policy.

Mr. WYDEN. Madam President, I will make one last comment and then we will be happy to have our colleague from Maine join us in this bipartisan colloquy.

As we go forward with this legislation, I hope we will do more to look at the exchanges, which are the new marketplace for American health care. We haven't had that kind of approach since decades ago when we had a discussion about a system that, for all practical purposes, tethered people to one choice that was a judgment by an employer and insurance company. I wish to make sure, in the days ahead, that as many people as possible can keep exactly what they have today. That is something the President feels strongly about. That is something every Member of the Senate feels strongly about. I also want employers and employees to be able to say they are going to have a broader range of choices than they do now.

I think that can be done in a way that does not destabilize employer-based coverage. In fact, I believe it will strengthen employer-based coverage. I think that is one of the reasons the National Federation of Independent Business has endorsed our proposal.

We have a lot of work to do. I think there is a lot of good faith among Senators on both sides to get this done. I have always felt that on issues such as this, when you are talking about one-sixth of the American economy, you ought to try to find as much common ground as you possibly can. The three of us have come together behind a new set of amendments that does find some bipartisan common ground, around principles the President has embraced—choice and competition.

At this point, I yield whatever time she desires to our friend from Maine, who is a wonderful partner in this, along with Senator BAYH. Americans are looking for commonsense ideas above all else. That is what we have sought to do in this proposal.

I yield to my friend from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, first, let me thank my two colleagues for their hard work on these amendments. My colleague from Oregon, Senator WYDEN, has been working so hard on health care issues for such a long time. My colleague from Indiana, Senator BAYH, and I have worked together on other issues, and I am proud of the fact that the three of us have been able to come together, in a bipartisan way, to present to our colleagues three important amendments.

It is, as Senator BAYH has noted, so unfortunate that the debate on this bill has been so divisive and partisan. Senator WYDEN approached me about trying to find some common ground on issues that would unite us.

I should make clear the adoption of these amendments—important though they are and great steps forward though they are—do not solve all the problems I have with the legislation before us. But they do improve the underlying bill in important ways because they help to advance the goal of more affordable insurance choices for consumers. Providing more choices and more competition and greater affordability, after all, should be major goals of health care reform.

The bill before us falls short in meeting those objectives.

Let me discuss our amendments. In summary, our amendments would allow individuals, who are not receiving subsidies, to purchase lower cost plans if that coverage is more affordable for them and more appropriate for them.

We are also proposing health insurance vouchers that would provide more options for employers and employees alike. We are proposing incentives to insurers to keep their rates lower than they otherwise might be.

Let me further explain our three amendments. First, we would open the catastrophic plan—the so-called young invincibles plan—in the individual market to anyone, regardless of age, who is not eligible for a subsidy under the bill.

It is incredible to me that we are going to so constrain the insurance choices for an individual who is receiving no taxpayer subsidy at all. That does not make sense. We want to ensure not only that people can keep the insurance they have, if they like it, but also that they have more options available to them. Why should we say that an individual who is not receiving any help—no subsidy at all—can only purchase one of the four types of plans that are authorized by this bill?

Some would say, well, if you do that, you are going to have a problem where a person will perhaps have a health savings account or a supplemental catastrophic insurance plan and wait until they are ill to trade up to a far better plan. But there is a way to stop that from happening. We have drafted our amendment so that if an individual wished to upgrade his or her coverage, he or she would have to wait until the next plan year and then could only upgrade to what is known as the bronze plan—the next higher level of coverage. That would help greatly to avoid the problem of adverse selection and having a situation where an individual simply waits until he or she becomes ill before upgrading coverage.

We also wish to make sure consumers know exactly what they are buying and what kind of coverage they are getting. That is why we would require health plans to disclose fully the terms of the coverage to ensure that consumers fully understand the limitation.

Finally, this amendment makes clear that States have the ability to impose additional requirements or conditions for the catastrophic plans offered under this bill.

The bottom line is, health care reform should be about expanding access to affordable choices. The bill that is on the floor now would cause many Americans in the individual market to pay more for health care coverage than they do today. That isn't right. If their health care coverage is working well for them, if they are higher income and can bear the risk, if they have a health savings plan, if they are not getting a taxpayer subsidy, why should we dictate, to this degree, the level of coverage they can buy?

I believe this amendment is simple common sense. Let me explain what it would mean in my home State of Maine because I think it shows that one size does not fit all. In Maine, 87.5 percent of those purchasing coverage in the individual market have a policy with an actuarial value of less than 60 percent. The most popular individual market policy sold in Maine costs a 40-year-old about $185 a month. These individuals often pair this catastrophic coverage with a health savings account.

Under the bill we are debating, unless they are grandfathered and don't have any change—for example, they have not gotten married or divorced—then that 40-year-old would have to pay at least $420 a month—more than twice as much—for a policy that would meet the new minimum standard. Otherwise they would have to pay a $750 penalty.

There is an exception in the bill, but it is only for people who are under the age of 30. What we are saying is, let's broaden that, so that if you don't receive help from the government, if you don't receive a taxpayer subsidy, you, too, can buy that kind of catastrophic coverage plan.

A second amendment the three of us are offering would provide more choices to small businesses and to their employees. Giving employers and employees more choices should be among the chief goals of health care reform.

Our amendment would allow employers who choose to do so to offer vouchers to employees so they can purchase insurance on the exchange. This would allow them, for example, to use the employer voucher, plus tap into the subsidy available because of their income level, and put some of their own funds into purchasing the kind of coverage they want. As Senator WYDEN has explained, this program is completely optional. Employers could offer these vouchers or decide to continue with their employer plan.

Let me tell you one reason I think this strengthens the bill. We need more people buying insurance through the exchanges, because if more people are using the exchanges, it broadens the risk pool, and the rates will be better for everyone. In insurance, having more people over which to spread the risk drives costs and premiums down.

So it is not surprising to me that our Nation's largest small business group, the NFIB, has endorsed our amendment. Let me read one paragraph from the NFIB letter because it really sums it up. The NFIB says:

> This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond ''take it or leave it.'' This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups, and kill jobs.

I think the NFIB has said it well. This will give more choices both to employers and to employees.

Finally, let me say a few words about our proposal to modify the formula for the allocation of the $6.7 billion annual tax on health insurance providers.

There are a lot of problems with that particular tax, not the least of which is the gap between when the tax is imposed and when the subsidies are finally available 4 years later. Another problem is that the tax applies to nonprofit insurers as well as for-profit insurers. I am working with Senator CARL LEVIN to try to address that problem.

Here is what we are saying. The way the tax is designed in the bill, there is little to keep insurers from jacking up premiums, which is exactly the opposite of what we want them to do. They are going to just pass this tax on. So what we propose is to give insurers an incentive to keep premiums as low as possible. Under our amendment, if you are an insurer that is holding down the cost of your premiums, you don't pay as large a share of the tax. That makes sense. That helps us be more fair to the efficient insurer that is working hard to keep premiums down.

Again, I am very pleased to join with my two colleagues in presenting to the Senate three amendments that will provide more choices, greater affordability, and more options. These should be the goals of health care reform, and these amendments help to advance those goals.

Mr. WYDEN. Madam President, how much time do we have?

The PRESIDING OFFICER. There is 3 minutes 50 seconds remaining.

Mr. WYDEN. Madam President, I thank my colleague from Maine for her great statement. She summed it up so well.

To close, I will turn to Senator BAYH, and if we have time, I will add a thought or two.

Mr. BAYH. Madam President, I will be brief. I compliment Senator COLLINS on an excellent presentation. She summarized it very succinctly and in a way that was compelling.

I hope our colleagues will take note that among the three of us, we have the east coast represented, the west coast represented, and the Midwest represented. So we span the country and this body. I hope that will cause our colleagues to take some note.

The Senator from Maine focused on the letter from the NFIB. This helps small businesses at a time when they are struggling to create jobs. I hope our colleagues will take note of this letter.

The Senator from Maine also pointed out, why should we control the health care choices of individuals who are receiving no subsidies. That ought to be up to them. We accomplish all of those things.

It is a pleasure doing business with Senator COLLINS. This is a practical approach to solving these problems. I hope our colleagues will take notice.

The last thing I will say is, I repeatedly have people come up to me and say: Boy, RON WYDEN has some great ideas. We need more of these ideas in this bill. And this is accomplishing that. Senator WYDEN has been a true leader for many years in this area. I am glad choice and competition is being introduced, and it is because of his good work.

Mr. WYDEN. Madam President, to close, briefly, I thank my colleagues. I don't want to make this a bouquet-tossing contest, but to have Senator BAYH and Senator COLLINS—they are as good of partners as it can possibly get.

At the end of the day, Americans are going to watch this bill, they are going to watch it next year during the open enrollment season when millions are signing up for their coverage, and they are going to be looking to see if we did everything possible to hold down their premiums. Holding down their premiums—there is a variety of ways to go about it, but there is no better tool than to bring the principles of the marketplace, the principles that are used in every other part of American life—choice and competition—for the challenge ahead.

With the help of Senator COLLINS and Senator BAYH, we are going to prosecute that case. We are going to do it in a bipartisan way.

I thank my colleagues. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that Republican Senators be permitted to engage in a colloquy during our time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, my grandfather was a Santa Fe railway engineer. He lived in Newton, KS. So far as I can tell, he was one of the most important men in the world. I was 5, 6, 7 years old when I would go out there. He drove one of these great big steam locomotives. If there were as many yellow flags and red flags along the track when he was driving that Santa Fe locomotive as there are with the health care locomotive that is going through the Senate today, I think my grandfather would have been guilty of gross negligence if he did not slow it down and see what those red flags and yellow flags meant.

There is a lot of talk about making history with this bill, but there are a lot of different ways to make history. One of the things I hope we will be very careful to do in the Senate is not to make a historic mistake with this health care legislation.

Now we have even one more red flag to consider. It came out last night from Chief Actuary Richard Foster of the Centers for Medicare and Medicaid Services. The Centers for Medicare and Medicaid Services is not a Republican organization nor a Democratic organization. It is in the Obama administration. But it is the agency in charge of the Federal Government's spending for health care, which, according to Mr. Samuelson, who wrote a column in Newsweek recently, was 10 percent in the year 1980 and 25 percent today of our government's total expenditures.

If we go back to the reason we started all this debate on health care, let's remember that the reason we started the debate was first to see if we can bring down the costs of health care because the red flags and the yellow flags are everywhere for small businesses, for individuals, for our government. We cannot continue to afford the increasing cost of health care in America. So our first goal here is to bring down the costs.

Yet, Mr. Foster, the Chief Actuary of the Centers for Medicare and Medicaid Services, in a lengthy report delivered last night on the health care bill—most of which we have seen but some of which we do not know about yet; it is still being written in the back room—says that it will increase costs. Instead of reducing costs, it will increase costs. It points out the obvious, which is that the taxes in the bill will raise the premiums for the 180 million of us pay who have employer-based insurance, and for those who have individual insurance. It talks about the millions of Americans who will be losing their employer insurance by the combination of provisions in this bill, many of whom will end up in Medicaid, where 50 percent of doctors will not see a new patient. But maybe the most important finding is the most obvious finding, the one which we have been suggesting to our colleagues day-in and day-out. It is one we ought to pay attention to and one which almost every American can easily understand. And it is this—it has to do with Medicare, the government program on which 40 million seniors depend. This bill would cut $1 trillion—let's start this way. Medicare, the program we depend on, its trustees say it is going broke in 5 years. It is already spending more than it brings in, and it will be insolvent between 2015 and 2017. Those are the Medicare trustees telling us this.

What does this bill do to that?

Mr. MCCAIN. Will the Senator yield for a question?

Mr. ALEXANDER. If I may finish my point.

What does this bill do? It would cut $1 trillion from Medicare. I ask the Senator from Arizona, if the program is going broke and you cut $1 trillion out—and then it has been suggested over the last few days that we add several million more people into Medicare—what do you suppose the result would be?

Mr. MCCAIN. The answer is, obviously, that I don't know.

I would like to say to the Senator from Tennessee—and Dr. BARRASSO is here as well—a lot of Americans have heard of the Congressional Budget Office. I am not sure many have heard of the Centers for Medicare and Medicaid Services, which is part of the Department of Health and Human Services. Are they not the people whose entire focus is not on the entire budget, as CBO's is, but just on Medicare and Medicaid, so that they can make determinations as to the future and the impact of various pieces of legislation on specifically Medicare and Medicaid? Is that a correct assessment?

Mr. ALEXANDER. The Senator from Arizona is exactly right. I believe I have my figures right. I think Mr. Samuelson said in his column the other day that in 1980 the Federal Government was spending 10 percent of all our dollars on health care and today it is 25 percent. And this is the agency in charge of most of that massive Federal expenditure every year.

Mr. MCCAIN. I thank my friend. Because the findings as of December 10, 2009, which is entitled ''Estimated Financial Effects of the 'Patient Protection and Affordable Care Act of 2009,' as Proposed by the Senate Majority Leader on November 18, 2009,'' have some incredibly, almost shocking results, I say to my friend from Tennessee.

We know the bill before us does not bring costs under control. But as I understand this—and it is pretty, may I say, Talmudic in some ways to understand some of the language that is in this report, but is it not true that the Reid bill, according to this report—this is not the Republican policy committee but the Centers for Medicare and Medicaid Services—doesn't it say:

The Reid bill creates a new long-term insurance program—

Called the CLASS Act—

that the CMS actuaries found faces ''a very serious risk'' of becoming unsustainable as a result of adverse selection by participants. The actuary found that such programs face a significant risk of failure and expects that the program will result in ''net Federal cost in the long term.''

I would like to mention two other provisions to my friend from Tennessee and Dr. BARRASSO, who is very familiar not only with this center but with Medicare and Medicaid services.

The Reid bill funds $930 billion in new Federal spending by relying on Medicare payment cuts which are unlikely to be sustainable on a permanent basis. As a result—

According to CMS—

providers could ''find it difficult to remain profitable and, absent legislative intervention, might end their participation in the Medicare program.''

The Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning that a significant portion of the increased demand for Medicaid services would be difficult to meet.

They go on to say:

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He also found that roughly 20 percent of all Part A providers (hospitals, nursing homes, etc.) would become unprofitable within the next 10 years as a result of these cuts.

Finally, he goes on to say:

The CMS actuary found that further reductions in Medicare growth rates through the actions of the Independent Medicare Advisory Board—

Which is one of the most controversial parts of this legislation—

which advocates have pointed to as a central lynchpin in reducing health care spending, ''may be difficult to achieve in practice.''

This is a remarkable study, I say to my friend from Tennessee.

Mr. ALEXANDER. I thank the Senator from Arizona for being so specific about this and making it clear that this is not a Republican Senator talking, this is a Republican Senator reading the report of the Federal Government's Chief Actuary for the Medicare and Medicaid Program. Senator BARRASSO, a physician for 25 years in Wyoming, brought to our attention some of these things earlier this week when he pointed out what this also says.

Isn't the point that if we keep cutting Medicare, there are not going to be any hospitals and any doctors around to take care of patients who need care?

Mr. MCCAIN. May I also ask, in addition to that question, has Dr. BARRASSO ever heard of the CMS being biased or slanted in one way or another? Isn't it one of the most respectable and admired objective observers of the health care situation as far as Medicare and Medicaid are concerned?

Mr. BARRASSO. My answer to that is they are objective. That is why we did not get this report—I have the same copy my colleague from Arizona has. This just came out, and the reason is because they wanted to take the time to study the bill which they got in the middle of November. So they needed the time to actually go through point by point what the implications were.

The Senator talked about the one segment where they talk about they ''face a significant risk of failure.'' They actually go on to say: ''This will eventually trigger an insurance death spiral.'' This is for people who depend upon Medicare for their health care.

There is an Associated Press story out today that says this provides a sober warning—a sober warning—today to Members of the Senate. This is a time when the Senate raised the debt limit in this country by over $1 trillion. As the old saying goes—I say to my friend who served in the Navy—they are spending money like drunken sailors, and yet they want to keep the bar open longer. They want to increase the debt at a time when our Nation cannot afford it, when we have 10 percent unemployment.

The folks who know Medicare the best and can look at this objectively and share with the American people what their beliefs are as to what the impact is going to be say that is going to be devastating for patients who rely on Medicare for their health care—our seniors—and devastating for small community hospitals. I see the former Governor, now Senator of Nebraska, is here, and he knows, as I do from Wyoming, the impact on our small community hospitals.

But as the Senator from Tennessee said, this is all being done in a back room. We are not privy to the newest changes, which I think are actually going to make matters worse. The New York Times today says Democrats' new ideas would be even more expensive. Questions exist about the affordability. What we are dealing with is a situation that is unsustainable, and that is why the newest poll out today by CNN—certainly not biased one way or the other—finds that 61 percent of Americans oppose this bill. It is the highest level of opposition to date because more and more people are seeing and learning the truth about what is being proposed in the bill before the Senate.

Mr. MCCAIN. This is the information on the bill as it is; correct—the original bill? This is without the expansion of Medicare taken into this study, which already, as the Senator quoted from the New York Times and other health care experts, is going to increase costs even more. As you expand Medicare, among other things, you run the risk of adverse selection, which means the people who are the sickest immediately enroll, which then increases the cost, and then who would be paying the increased Medicare payments? The young and the healthy. I ask my friend from Wyoming, should we do that to the next generations of Americans?

Mr. BARRASSO. Well, we should not. We need to be fair. We need to deal with this in a realistic way. But the bill in front of us now is going to raise taxes $500 billion, it is going to cut Medicare by almost $500 billion for our seniors who depend upon it, and for people who have insurance they like, it is going to increase their premiums. They are going to end up paying more than if no bill was passed at all.

That is why, across the board, more people would rather have this Senate do nothing than to pass this bill we are looking at today. They understand the impact on this Nation and our future is devastating. This will cause us to lose jobs, with the taxes; it will cause us to lose care in small communities; and for our seniors who depend upon Medicare, they are going to throw more people into Medicaid, another program where half the folks now can't find a doctor who will see them.

All in all, there is nothing I see about this bill or any of the new changes and certainly nothing in this report that says to the American people: Hey, you might want to think about this. The American people have thought about it. This report tells the American people this is not what they want for health care in this Nation.

Mr. ALEXANDER. Madam President, I ask unanimous consent to have printed in the RECORD the summary of the report of the Centers for Medicare & Medicaid Services.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES, OFFICE OF THE ACTUARY,
Baltimore, MD, December 10, 2009.

From: Richard S. Foster, Chief Actuary.

Subject: Estimated Financial Effects of the ''Patient Protection and Affordable Care Act of 2009,'' as Proposed by the Senate Majority Leader on November 18, 2009.

The Office of the Actuary has prepared this memorandum in our longstanding capacity as an independent technical advisor to both the Administration and the Congress. The costs, savings, and coverage impacts shown herein represent our best estimates for the Patient Protection and Affordable Care Act. We offer this analysis in the hope that it will be of interest and value to policy makers as they develop and debate national health care reforms. The statements, estimates, and other information provided in this memorandum are those of the Office of the Actuary and do not represent an official position of the Department of Health & Human Services or the Administration.

This memorandum summarizes the Office of the Actuary's estimates of the financial and coverage effects through fiscal year 2019 of selected provisions of the proposed ''Patient Protection and Affordable Care Act of 2009'' (PPACA). The estimates are based on the bill as released by Senate Majority Leader Harry Reid on November 18 as an amendment in the nature of a substitute for H.R. 3590. Included are the estimated net Federal expenditures in support of expanded health insurance coverage, the associated numbers of people by insured status, the changes in Medicare and Medicaid expenditures and revenues, and the overall impact on total national health expenditures. Except where noted, we have not estimated the impact of the various tax and fee proposals or the impact on income and payroll taxes due to economic effects of the legislation. Similarly, the impact on Federal administrative expenses is excluded. A summary of the data, assumptions, and methodology underlying our estimates of national health reform proposals is available in the appendix to our October 21 memorandum on H.R. 3200.

SUMMARY

The table shown on page 2 presents financial impacts of the selected PPACA provisions on the Federal Budget in fiscal years 2010–2019. We have grouped the provisions of the bill into six major categories:

(i) Coverage proposals, which include both the mandated coverage for health insurance and the expansion of Medicaid eligibility to those with incomes at or under 133 percent of the Federal poverty level (FPL);

(ii) Medicare provisions;

(iii) Medicaid and Children's Health Insurance Program (CHIP) provisions other than the coverage expansion;

(iv) Proposals aimed in part at changing the trend in health spending growth;

(v) The Community Living Assistance Services and Supports (CLASS) proposal; and

(vi) Immediate health insurance reforms.

The estimated costs and savings shown in the table are based on the effective dates specified in the bill as released. Additionally, we assume that employers and individuals would take roughly 3 to 5 years to fully adapt to the insurance coverage provisions and that the enrollment of additional individuals under the Medicaid coverage expansion would be completed by the third year following enactment. Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10–year cost for the proposed legislation.

ESTIMATED FEDERAL COSTS (+) OR SAVINGS (−) UNDER SELECTED PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2009

[In billions]

Provisions	Fiscal year										Total, 2010–19
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Total [1]	$16.1	−$1.6	−$18.6	−$35.2	$22.4	$78.1	$83.0	$76.2	$74.5	$71.0	$365.8
Coverage [2]	....	....	....	....	93.8	141.1	158.3	165.8	178.6	192.3	929.9
Medicare	11.5	1.3	−13.4	−24.3	−60.5	−52.0	−66.0	−80.9	−95.8	−113.3	−493.4
Medicaid/CHIP	−0.4	−0.1	−0.7	−5.3	−4.9	−4.9	−4.8	−4.9	−4.8	−4.8	−35.6
Cost trends	....	....	....	....	−0.0	−0.1	−0.2	−0.4	−0.6	−0.9	−2.3
CLASS program	....	−2.8	−4.5	−5.6	−5.9	−6.0	−4.3	−3.4	−2.8	−2.4	−37.8
Immediate reforms	5.0	....	....	....	....	....	....	....	....	....	5.0

[1] Excludes Title IX revenue provisions except for 9015, certain provisions with limited impacts, and Federal administrative costs.
[2] Includes expansion of Medicaid eligibility.
[3] I Includes estimated non-Medicare Federal savings from provisions for comparative effectiveness research, prevention and wellness, fraud and abuse, and administrative simplification. Excludes impacts of other provisions that would affect cost growth rates, such as the productivity adjustments to Medicare payment rates, which are reflected in the Medicare line.

As indicated in the table above, the provisions in support of expanding health insurance coverage (including the Medicaid eligibility changes) are estimated to cost $930 billion through fiscal year 2019. The net savings from the Medicare, Medicaid, growth-trend, and CLASS proposals are estimated to total about $564 billion, leaving a net cost for this period of $366 billion before consideration of additional Federal administrative expenses and the increase in Federal revenues that would result from the excise tax on high-cost employer-sponsored health insurance coverage and other revenue provisions. (The additional Hospital Insurance payroll tax income under section 9015 of the PPACA is included in the estimated Medicare savings shown here.) The Congressional Budget Office and Joint Committee on Taxation have estimated that the total net amount of Medicare savings and additional tax and other revenues would somewhat more than offset the cost of the national coverage provisions, resulting in an overall reduction in the Federal deficit through 2019.

The chart shown on the following page summarizes the estimated impacts of the PPACA on insurance coverage. The mandated coverage provisions, which include new responsibilities for both individuals and employers, and the creation of the Health Benefit Exchanges (hereafter referred to as the ''Exchanges''), would lead to shifts across coverage types and a substantial overall reduction in the number of uninsured, as many of these individuals become covered through their employers, Medicaid, or the Exchanges.

By calendar year 2019, the mandates, coupled with the Medicaid expansion, would reduce the number of uninsured from 57 million, as projected under current law, to an estimated 24 million under the PPACA. The additional 33 million people who would become insured by 2019 reflect the net effect of several shifts. First, an estimated 18 million would gain primary Medicaid coverage as a result of the expansion of eligibility to all legal resident adults under 133 percent of the FPL. (In addition, roughly 2 million people with employer-sponsored health insurance would enroll in Medicaid for supplemental coverage.) Another 20 million persons (most of whom are currently uninsured) would receive individual insurance coverage through the newly created Exchanges, with the majority of these qualifying for Federal premium and cost-sharing subsidies, and an estimated 20 percent choosing to participate in the public insurance plan option. Finally, we estimate that the number of individuals with employer-sponsored health insurance would decrease overall by about 5 million, reflecting both gains and losses in such coverage under the PPACA.

As described in more detail in a later section of this memorandum, we estimate that total national health expenditures under this bill would increase by an estimated total of $234 billion (0.7 percent) during calendar years 2010–2019, principally reflecting the net impact of (i) greater utilization of health care services by individuals becoming newly covered (or having more complete coverage), (ii) lower prices paid to health providers for the subset of those individuals who become covered by Medicaid, and (iii) lower payments and payment updates for Medicare services, together with net Medicaid savings from provisions other than the coverage expansion. Although several provisions would help to reduce health care cost growth, their impact would be more than offset through 2019 by the higher health expenditures resulting from the coverage expansions.

The actual future impacts of the PPACA on health expenditures, insured status, individual decisions, and employer behavior are very uncertain. The legislation would result in numerous changes in the way that health care insurance is provided and paid for in the U.S., and the scope and magnitude of these changes are such that few precedents exist for use in estimation. Consequently, the estimates presented here are subject to a substantially greater degree of uncertainty than is usually the case with more routine health care proposals.

The balance of this memorandum discusses these financial and coverage estimates—and their limitations—in greater detail.

EFFECTS OF COVERAGE PROPOSALS ON FEDERAL EXPENDITURES AND HEALTH INSURANCE COVERAGE

Federal expenditure impacts

The estimated Federal costs of the coverage provisions in the PPACA are provided in table 1, attached, for fiscal years 2010 through 2019. We estimate that Federal expenditures would increase by a net total of $366 billion during this period—a combination of $930 billion in net costs associated with coverage provisions, $493 billion in net savings for the Medicare provisions, a net savings of $36 billion for the Medicaid/CHIP provisions (excluding the expansion of eligibility), $2 billion in savings from proposals intended to help reduce the rate of growth in health spending, $38 billion in net savings from the CLASS proposal, and $5 billion in costs for the immediate insurance reforms. These latter four impact categories are discussed in subsequent sections of this memorandum.

Of the estimated $930 billion net increase in Federal expenditures related to the coverage provisions of the PPACA, about two-fifths ($364 billion) can be attributed to expanding Medicaid coverage for all adults who make less than 133 percent of the FPL and all uninsured newborns. This cost reflects the fact that newly eligible persons would be covered with a 100-percent Federal Medical Assistance Percentage (FMAP) for the first 3 years and approximately 90 percent thereafter; that is, the Federal government would bear a significantly greater proportion of the cost of the newly eligible enrollees than is the case for current Medicaid beneficiaries.

Mr. ALEXANDER. I ask the Senator from Georgia, while this is a complex document, in many ways, isn't it a matter of common sense that if you take a program that is going broke and you take $1 trillion out of it and you add millions of people to it, isn't the end result going to be there is not going to be anyone left to take care of the patients who need help? Isn't that the logical result, just as this report says?

Mr. CHAMBLISS. Not only does that report say that, but as you say, common sense ought to tell you that. Unfortunately, it is pretty obvious the folks on the other side of the aisle who are promoting this bill don't get that message.

Let me quote the chairman of the Finance Committee, who today issued this statement relative to the CMS report the Senator has in his hand. He said:

The report shows that health reform will ensure both the Federal Government and the American people spend less on health care than if this bill does not pass.

That statement is directly contrary to the statement in the CMS report that Senator ALEXANDER just referenced, which says:

. . . we estimate that total national health expenditures under this bill would increase by an estimated total of $234 billion (0.7 percent) during calendar years 2010–2019.

Not only that, but the report says that national health expenditures would increase as a percentage of GDP from $1 of every $7, which is about 16 percent, to $1 out of every $5, which is 20 percent.

What the report concludes is not only are our health care costs going to go up, but as the Senator from Arizona said, 20 percent of all Part A providers—nursing homes, hospitals, home health—would become unprofitable within the next 10 years as a result of the provision in this bill relating to the Medicare cuts the Senator from Tennessee talked about.

The American people do get it. That is why these poll numbers the Senator from Wyoming just stated coming out of CNN and why the FOX poll I saw this morning said 57 percent of the people in America are opposed to this bill. The American people are getting it but, for some reason, our friends on the other side of the aisle are not.

Mr. ALEXANDER. I see the Senator from Nebraska is here, and we had a conversation earlier about the attitude of people in Nebraska. It is very helpful to have independent evaluators who tell us that if you cut $1 trillion out of a program that is going bankrupt and then add more people to it, doctors and hospitals are going to go broke. We have heard that before from the Mayo Clinic, and I think Senator JOHANNS has been hearing that in the State of Nebraska.

Mr. JOHANNS. I have heard it all over the State. Today, let me say, the fog cleared. The fog cleared and the Sun is shining brightly on this mammoth experiment with 16 percent of the economy. This actuary says, very clearly—and he has no ax to grind with anyone—that costs are going to go up under this bill; that care is going to be jeopardized under this bill; that the very linchpin, the essence of what this bill was supposed to be all about, can't happen.

If I might, I wish to refer to something which I will ask to be a part of the RECORD to gain some perspective.

I wish to applaud my colleagues on this side, and here is why. We wrote to the majority leader back in the first part of November and we said CBO had not been able to tell us what the ultimate impact would be on health care costs and we felt strongly we needed a second opinion. So we asked that this bill be submitted to scrutiny by CMS, and that is what we are getting today. Twenty-four of us signed onto that.

Madam President, I ask unanimous consent to have printed in the RECORD the letter to the majority leader, dated November 12, 2009.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, November 12, 2009.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MAJORITY LEADER REID: This health care bill will be the most significant piece of legislation that Congress considers this year because it would undoubtedly affect every American. Therefore, it is vitally important that we do not make decisions without a complete and thorough analysis of the bill.

One of the most important issues facing us as we review this legislation is its effect on overall health care spending. The President has repeatedly stated that he believes health reform should control health care costs. Achieving that objective, as you know, means more than simply employing draconian cuts in Medicare spending and creating numerous new taxes to minimize the effect of creating a vast new health care entitlement on the federal deficit. Bending the cost curve means curbing the rate of all health spending.

Unfortunately, the Congressional Budget Office has been unable to produce an estimate of the effect of the bills before us on overall medical spending though we note that the CMS Actuary has provided such an assessment of an earlier version of the House health reform bill (HR 3200). Such an analysis would be invaluable to the Senate as we consider this important legislation.

Therefore, we request that you submit the legislation to the Office of the Actuary at CMS for analysis and make the findings public before you bring the bill to the Senate floor for consideration. We agree with President Obama that health care legislation must ''bend the cost curve so that we're not seeing huge health-care inflation over the long term.'' Therefore, we would specifically like the Office of the Actuary at CMS to determine if this legislation will bring down health care expenditures over the long term.

We look forward to your response and the assurance that this secondary analysis will be completed in order to provide us and the American people with the information necessary to make a well-informed vote.

Sincerely,

Mike Johanns; Sam Brownback; Pat Roberts; Robert F. Bennett; Tom Coburn; Richard Burr; Christopher S. Bond; Roger F. Wicker; John Barrasso; Michael B. Enzi; Jim Bunning; Mike Crapo; Orrin G. Hatch; Lamar Alexander; Susan M. Collins; John Thune; George S. LeMieux; Jim DeMint; Mitch McConnell; George V. Voinovich; John Cornyn; James E. Risch; Kay Bailey Hutchison; Lindsey Graham; Thad Cochran.

Mr. JOHANNS. Today, we finally have come to grips with the fact that all the promises made are not being fulfilled by this bill; that the $2.5 trillion that will be spent will accomplish nothing; that health care costs would not go down—they will, in fact, go up; and that people will lose their private insurance.

I tell you the most heartbreaking thing for me, and any other Senator who has rural hospitals, which is just about every Senator, is that 20 percent, as the Senator from Georgia points out, will be underwater. That means nursing homes that provide care for real people, and that means hospitals that provide services for real people. I tell you, in a State such as Nebraska, when hospital care disappears in a small town, that may mean hospital care disappears for hundreds of miles.

Mr. ALEXANDER. If I could ask the Senator from Nebraska this question. Did a rural hospital in Nebraska or Wyoming or some State not—did I notice in a letter from the Mayo Clinic this week, they said cuts such as this or an expansion of Medicare under these circumstances would cause them to—well, to drop Medicare, period; they lost $840 million this year, and they are beginning to say to some citizens from Nebraska, Montana, other areas: We can't take you if you are a Medicare patient or if you are a Medicaid patient.

Mr. JOHANNS. They are saying that, and that is what is happening because they are losing money. They are definitely losing money on Medicaid and they are losing money on Medicare.

So what the Reid bill does is it says: Mr. ALEXANDER, you sell whatever—cars. Let's use that as the analogy—and I know you are losing $100 on every car. But let's just give you twice as many to sell. Well, you are going to lose twice as much money. That is their solution to the health care crisis in this country.

But what this actuary points out, what the Mayo Clinic points out, and what so many analysts now have pointed out is that this bill is going to put hospitals under and it is going to put nursing homes under.

Here is another point that gets lost in this complex debate. That nursing home or that hospital may be the only major employer in that community. When you lose that, you not only lose your medical care, but you lose those jobs. I have said on the floor before that this bill is a job killer. It is a job killer. There is no way of getting around it. Those jobs will disappear in that small town, that rural area, and even in the big cities.

I hope our friends on the other side study this very carefully. This is a roundhouse blow to the Reid plan—to the Reid-Obama plan. This, in my judgment, proves, beyond a shadow of a doubt, that this is going to crush health care in our country.

Mr. ALEXANDER. I would ask the Senators from Wyoming and Georgia, who are here, to go back to the beginning. When we began this debate, the President, in his summit at the beginning of the year, very correctly—and I applauded him for that—all of us said we have to reduce health care costs—costs to us, costs to small businesses, and costs to our government. But doesn't this report of the chief actuary of the government say the Reid bill will actually increase health care costs?

Mr. BARRASSO. It does say that. The President has said he wanted to bend the cost curve down. This report says, if we do these things that are in the Reid bill, costs of care will actually go up faster than if we did nothing at all. That means for people who buy their own insurance, the cost of their premiums will go up faster than if this Senate passed nothing at all.

Mr. ALEXANDER. So if I am understanding it, we are going to cut $1 trillion, when fully implemented, out of Medicare; we are going to add $1 trillion in taxes, when fully implemented; we are going to run up the debt, we believe on this side; we are going to increase premiums and costs are still going up?

Mr. BARRASSO. For people all across the country, costs are still going to go up. The cost of doing business will go up. For families who buy their own insurance, the cost of their premiums will go up. For people who are on Medicare, they are going to see tremendous cuts into that program, and they depend on that for their health care. So costs are going up for people who pay for their own and for businesses that try to build jobs.

We know small business in this country is the engine that drives the economy, and according to the National Federation of Independent Businesses, 70 percent of all new jobs come from small businesses. They are going to be penalized to the point they are not going to be able to add those new jobs. The NFIB says we will lose across the country 1.6 million jobs over the next 4 years as the government keeps collecting the taxes but doesn't even give any of these health care services because those have all been delayed for 4 years.

Mr. ALEXANDER. We have about 6 minutes remaining in our time. I wonder if the Senator from Georgia, having heard the comments, has any additional recommendations on the chief actuary's report.

Mr. CHAMBLISS. I wish to ask a question or two of the Senator from Wyoming, who is a medical doctor and who, prior to coming to the Senate, was an active orthopedic surgeon.

I have had physicians come into my office by the droves and talk to me about Medicare before we ever got into this health care debate, and what I heard was in reference to the reimbursement rate under Medicare to physicians and to hospitals being so low.

In fact, the American Hospital Association has come out just in the last 24 hours and pointed out that hospitals across the Nation get a return of about 91 cents for every dollar of care provided. That is not 91 cents of the amount of charges from the hospital to Medicare, it is 91 cents of the cost of the care provided. So the return is about 10 percent less to a hospital than the cost that the hospital has in it.

My understanding is that at least 10 percent less than the cost provided for a physician is reimbursed to the physician under Medicare. As a result of that, the younger physicians, particularly, who are coming out of med school with these huge debts they have incurred as a result of the long years they are required to be in school, simply cannot afford to take Medicare patients and they are not taking Medicare patients. Is that in fact what is happening in the real world? And will that not get worse under this proposal?

Mr. BARRASSO. It is happening. It will get worse under the proposal that is ahead of us. That 90-percent figure is actually a high number. I know a number of physicians and hospitals, especially in rural communities, that get reimbursed less than that. The ambulance services do not even get reimbursed enough from Medicare—these are volunteer ambulance services—to fill the ambulance with the gas for taking somebody the long distances from where they may have fallen and hurt themselves, broken a hip, to get them all the way to the hospital. This is across the board bad for America.

We say we want patients to be able to get care. If you throw a whole bunch more people on to this boat that is already sinking, which is what the Democratic leader is now trying to do, it is going to make it that much harder for our hospitals to stay open, especially in these communities where there is only one hospital providing care—much more difficult. But with any young physician coming out with a lot of debt, trying to hire the nurse and pay the rent and the electricity and the liability insurance and all of that, these do not even cover the expenses. That means they have to charge more to the person who does have insurance, the cost shifting that occurs.

As a result, for people who have insurance, they are going to see their rates going up. For people who rely on Medicare, it is going to be harder to find a doctor. For those who are put onto Medicaid, with the aid for those who need additional help, which the Senate majority leader is trying to put more people into that area, it is going to be harder for them to find care.

Across the board, there is nothing good with this proposal. What we have seen today documented from the folks who are objective and look at the whole picture, they think it is actually as bad—they admit it is as bad as we have been saying it is. They say you guys have been right, what you are saying about the cost of care, the impact on health care. And their phraseology is such that I think they absolutely pinpoint all of the reasons that the American people, now by a number of 61 percent, oppose this bill we are taking a look at. That is why the Mayo Clinic has said, in the letter from their executive director of their Health Policy Center, ''Expanding this system to persons 55 to 64 years old will ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country.'' That is what we are looking at.

Mr. ALEXANDER. Madam President, how much time remains?

The PRESIDING OFFICER. There remains 1½ minutes.

Mr. ALEXANDER. Madam President, if I could conclude our time, with the permission of the Senator from Georgia and Wyoming, instead of racing down this train track with yellow flags and red flags flying everywhere, people often ask us: What would you do? What we would do is what we think most Americans would do when faced with a big problem, not try to solve it all at once but to say, What is our goal? Our goal is reducing cost. What are the first four or five steps we can take to reduce costs? Can we an agree on those? We think we can. Let's start taking them. For example, small business health plans to allow small businesses to offer insurance to their employees at a lower rate. That legislation is prepared and before the Senate.

Reducing junk lawsuits against doctors. That reduces costs.

Allow competition across State lines for insurance policies. That reduces costs.

Going step by step to re-earn the trust of the American people to reduce health care costs is the way to go, instead of making what this new report from the Center for Medicare and Medicaid Services helps to show again would be a historic mistake.

I yield the floor.

Mr. ROBERTS. Will the Senator yield for an observation?

Mr. ALEXANDER. Certainly.

Mr. ROBERTS. I thank the Senator for yielding.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Kansas.

Mr. ROBERTS. Madam President, I will be very brief. I thank the Senator from Tennessee, not only for his statement but for his constant efforts. Facts are stubborn things. Yet he has pointed out basically what this report now confirms. During the last few months we have seen some commentary that says "scare tactics," of all things. I happen to have the privilege of being the chairman of the Rural Health Care Caucus. I was in the House of Representatives when I had the privilege of serving there and I am a cochairman with Senator TOM HARKIN of Iowa. There are about 30 of us who, from time to time, will correspond and meet and send messages back and forth to try to keep the rural health care delivery system viable.

We have been worried for some time in regard to what is going to happen to Medicare, what is going to happen in regard to cost, what is going to happen in regard to rationing. Every hospital director, every hospital board in rural America has worried about these things—more especially about CMS, which has been described here in detail. That is the Centers for Medicare and Medicaid Services.

I have to tell you, if you are a hospital administrator or if you are on the board of a local hospital in a rural area, and you hear the word CMS, it is probably not viewed in the best of considerations, that CMS is in charge of enforcing what H2S comes down with. So in terms of reimbursement, in terms of all things—competitive bidding—and I am talking about doctors, hospitals, nursing homes, home health care, hospice, all of this—when they hear the word CMS a cold chill goes down the back of their neck, more or less like expecting Lizzy Borden to come in the front door.

So I am especially glad that the actuary, Mr. Richard Foster, the Chief Actuary from CMS, has shined the light of truth into darkness. He has taken the original bill we have been talking about for some time, as my colleague has pointed out, and said basically this bill is going to increase costs and is going to result in rationing. It does not take into consideration the latest iteration that we hear from the press and media about including people 55 to 65 into Medicare. It is going to be interesting, if we have enough time—although I know that the distinguished majority leader has asked for a CBO score—but I would sure like to know what Mr. FOSTER would think of that idea. I think it would be far worse.

I encourage all of my colleagues who belong to the Rural Health Care Caucus to take a very hard look at this. This confirms what we have been saying for some time. These are not scare tactics, these are actual facts.

Let me say, too, I know when this debate first started some of the national organizations that represent doctors and hospitals, perhaps nursing homes—certainly not any home health care—well, I take that back. There was a letter written by the home health care folks at one time, but certainly not hospices—indicating that they were lukewarm, warm to the bill, or would perhaps support it. I think the message was pretty clear—come to the breakfast or you won't come to lunch. That was pretty bare knuckles but they hoped that at least by insuring those who have insurance, that would make their situation better.

Then, of course, came the latest iteration to this bill of putting in people 55 to 65, and the national association, in regard to our doctors and our hospitals, said: Whoa.

Let me point out in Kansas and in many States throughout the country there never was the support. They knew exactly what would happen if we passed this bill and CMS would come knocking on their door. I might add it wouldn't be CMS that would actually do that, it would be the Internal Revenue Service under this bill, and that was one consideration where I made about a 15-minute speech and obviously not too many people paid attention. But all patients, all doctors, all nurses, all clinical lab folks, anybody connected with the home health care industry or hospice or nursing homes or whatever, should have known it is going to be the IRS that is going to enforce this as well as CMS, which has been doing most of the enforcing.

In Kansas, the Kansas Medical Society said: No, no, we are not going to go along with this bill. I am talking about the bill we have been talking about for some time. The Kansas Hospital Association was adamant. They said no. Obviously that was because of advice they got from 128 hospitals in my State, saying: No, we cannot reconcile with this because of cost, because of the rationing. We are only being reimbursed at 70 percent or less, as we talk about it—and the doctors about 80 percent.

Many doctors do not serve Medicare now in Kansas. Let me rephrase that. Some doctors don't serve Medicare in Kansas. If this bill passes, a lot of doctors simply will not serve Medicare. You can have the best plan or the best card in the world, it is not going to make any difference if you can't see a doctor. It is not worth a dime.

Then I have to say the Kansas Nursing Home Association and Kansas Home Health Care folks and the Kansas Hospice folks all said: No, this is not where we want to go. This is self-defeating. This is not going to do what the sponsors of the bill and what everybody for health care reform hoped they would actually see happen.

I don't know what the word is, I am—not overwhelmed, I am extremely glad; I am somewhat surprised but I am extremely glad that CMS again shined the light of truth into darkness. I commend Mr. FOSTER, the chief actuary. I recommend this as required reading for everybody who was going to vote for this bill and certainly with the latest iteration, where we are adding anywhere from 10 to 20 to 30 million people to Medicare, which will make the situation much worse in regard to Medicare being actuarially sound and costs going up, premiums going up, and also rationing, the dreaded rationing. It is not a scare tactic but actually a fact.

I yield my time.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I have been on the floor now for about an hour listening to my colleagues on the health care debate. Certainly I want to express the opinion from many people in the Northwest. We know that doing nothing about health care certainly will guarantee that premiums will go up. We know it happened in the last 10 years; they have gone up 100 percent. We know that doing nothing now means they will go up 8 to 10 percent a year. We also know there is about $700 billion in waste in the system.

This is about what we can do to reform the system so we can stop the rise, the increase we are seeing in our premiums. There are many things in this legislation, changing fee-for-service systems so we are driving down the quantity of health care that is delivered instead of making sure that it is quality; making sure we make reforms in long-term care; making sure we give the power to States to negotiate and drive down the costs. I know my colleague Senator COLLINS was on the floor with some of my other colleagues, the Senators from Oregon and Indiana, to discuss their ideas about how we improve cost containment.

I hope my colleagues in the next days will join us in the discussion about how we continually improve the bill to drive down costs, because doing nothing will not get us to that point.

(The remarks of Ms. CANTWELL and Ms. COLLINS pertaining to introduction of S. 2827 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Madam President, I ask unanimous consent to be able to enter into a colloquy with my Republican colleagues for up to 30 minutes, and that following those remarks, the Republican leader be recognized, and that following his remarks Senator DURBIN be recognized to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. Thank you, Madam President.

Madam President, I would like to speak on health care. The pending business before the Senate right now is actually the Omnibus appropriations bill, which the Senate moved to yesterday, after having started the debate on the health care legislation.

My motion is the pending business on the health care legislation, and so it is that motion I would like to talk about. Before I do so, I would like to again raise objection and concern to the fact that we have moved off the health care legislation debate to the Omnibus appropriations bill, both because I believe we should stay on the health care issue and work it through, but also because we moved to an Omnibus appropriations bill that we have not had an opportunity to review carefully and that raises the spending—I believe for these seven appropriations bills that have been compiled together, the spending is raised by an average of about 12 percent.

Once again, Congress is in a spending free fall, and whether it be the stimulus package or the appropriations for our ordinary operations of government or whether it be the bailouts or the tremendous other aspects of spending pressures and proposals, including the health care legislation we have, there seems to be no restraint in Washington with regard to spending the taxpayers' dollars.

But let's talk for a minute about the motion that was before the Senate before we moved off the health care legislation. It was a motion I raised to object to the tax increases on the middle class in America that are contained in the bill.

The motion I have is very simple. It focuses on the President's pledge. The President pledged that ''no family making less than $250,000 will see their taxes increase—not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes.'' The President pledged: You will not see any of your taxes increase one single dime.

So the motion I brought was very simple. It was simply to commit the bill to the Finance Committee to have the Finance Committee go through the 2,074-page bill and remove from the bill the taxes that are in it that apply to the middle class in the United States, as defined by the President here: being those who, as a couple, are making less than $250,000 a year, or those, as an individual, who are making less than $200,000 a year.

What we have seen is that not only has there been delay on reaching that goal but a counterproposal to the amendment has been brought up by the chairman of the Finance Committee, Senator BAUCUS. His counteramendment says:

It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

A number of us are here today to talk about the fact that this sense of the Senate is designed to provide cover for those who do not want to vote to protect American taxpayers. It is a meaningless sense of the Senate. We are going to go through the sense of the Senate phrase by phrase.

I would like to ask my colleague from the State of Wyoming if he would like to step in on the first phrase and comment. The first phrase says what the amendment is: ''It is the sense of the Senate . . .'' Would my friend from Wyoming like to comment on what that means?

Mr. BARRASSO. I would be happy to. OK, so we agree, it is the sense of the Senate. It is meaningless in terms of actually having the force of law. The Senator talked about the issues of the spending and the taxes, so we came up with a sense of the Senate.

This is why we are asking people all across the country to read the bill. The sense of the Senate essentially means nothing. It says we kind of agree on this, but there is no law applied.

Mr. CRAPO. Exactly. It is very critical to point out, a sense of the Senate has no binding impact. It is just sort of what we think.

Let's go to the next phrase in the amendment: ''that the Senate should reject any procedural maneuver that . . . '' in other words, the Senate should reject a procedural maneuver.

First of all, if the Senate is going to reject a procedural maneuver, that refers to what is happening on the Senate floor, procedural efforts. It does not refer to any substantive measure in the bill. The amendment we had pending—which this is going to be a counterpart to—specifically refers to the substance of the bill and says the substance of the bill should be changed to take out the taxes, the hundreds of billions of dollars of taxes.

I wonder, before we go to the next phrase, does my colleague from Wyoming care to comment?

Mr. BARRASSO. Well, I do care to comment. I care to comment that the important thing is to get the taxes out of the bill—not what a sense of the Senate is, not some procedural maneuver. It is the specifics of removing the taxes from the bill.

When the President says, ''My plan won't raise your taxes one penny,'' which was his quote, we need to be able to make sure the President is telling us the truth, that we need to remove these taxes from the bill.

The Joint Committee on Taxation looked at this bill—specifically looked at this bill—and it said that 38 percent of the people earning less than $200,000 a year will see a tax increase—a tax increase under the Reid bill.

So we want to make sure the President's words go with what is in the bill. So we need to actually remove the taxes—not just have a sense of the Senate.

Then, when we look at the chief of staff of the Joint Committee on Taxation, he was asked a question at the Finance Committee, and he said, when it all ''shakes out,'' we would expect people who are going to be paying taxes are going to have incomes ''less than'' the number the President said.

So I want to get to the point of the Crapo amendment, the amendment that actually says: Get these taxes out of the bill. This is a bill that is going to raise taxes by $500 billion, and those are taxes that are going to impact all Americans.

At a time when we have 10-percent unemployment, when the Senate is being asked to increase the debt level by another almost $2 trillion, the last thing we need to be spending our time on is a sense of the Senate. We need to actually get to those taxes that are going to affect the people, the hard-working people of America get those taxes out of the bill.

So as we are looking at that Baucus amendment; it is very nice, but it reminds me of the Bennet amendment we had here last week, and I think everybody voted for it. The New York Times, in their editorial, said it was a meaningless amendment. I want an amendment with some teeth in it that I can vote for, and I am ready to vote right now.

Mr. CRAPO. I thank my colleague from Wyoming.

The next phrase in the amendment—referring to a procedural motion—says that ''would raise taxes on middle class families.''

There is nobody bringing a motion to raise taxes. My amendment says it is referring the bill to the Finance Committee to take out the taxes on those who earn less than $200,000 or $250,000.

I note that my colleague from Kansas has arrived.

Would the Senator care to jump in at this point?

Mr. ROBERTS. I will tread with great care, I would say to my distinguished friend.

I thank the Senator for this colloquy. But you asked what it means that ''the Senate should reject any procedural maneuver that''—that is in quotes—and what does that really mean?

Well, it applies only to the Senate procedural motions. By itself it would have no effect on any substantive provision. That is the way it is commonly understood under Senate rules. It means, if adopted, the amendment would not remove any provision that has been identified as a tax increase on middle-class taxpayers, which is precisely what the Senator is trying to do. So basically it means nothing.

Mr. CRAPO. I think that is exactly the point we are trying to point out.

The next phrase in the amendment says, ''such as a motion to commit the pending legislation to the Committee on Finance.'' Remember, that is referring to the previous phrase that refers to a motion to increase taxes.

The only thing we need to say about this phrase is, there is a motion to commit the bill to the Finance Committee, but there is not a motion to commit the bill to the Finance Committee to raise taxes. It is to cut taxes.

The next phrase in the amendment is to suggest that there is an effort to try to kill the legislation.

Now, this is my motion. I suppose the implication there is, by trying to take the taxes out of the bill, we are trying to kill the legislation. What does that mean? Well, that means if you take the taxes out of this bill, that the bill does not stand. I assume that is what the amendment is trying to say. The reason that it does not stand is because they are saying the bill does not increase the deficit. Well, the only way you can say that the bill does not increase the deficit is if you do not bring into consideration the nearly $500 billion of cuts in Medicare, the nearly $500 billion of taxes which are being put on the people of this country, and the additional budget gimmicks that do not start counting the spending for 4 years, plus a number of other budget gimmicks.

So what they are saying is, you cannot take out one of the key legs of this bill, which is the way we raise all the money for this massive new spending, or else it will kill the bill. I think it is a pretty interesting fact that they have actually admitted in their own amendment what kind of games are being played.

Mr. ROBERTS. Will the Senator yield for a question?

Mr. CRAPO. Yes.

Mr. ROBERTS. That phrase that the Senator just mentioned is, ''which is designed to kill legislation.'' My question has already been answered by the distinguished Senator, what does it mean, but there are no motions that have been considered or pending, including the pending motion to commit by the distinguished Senator—is the motion designed to kill this legislation? Because that is what you are going to hear on the other side, and that is not the case.

Mr. BARRASSO. Madam President, it seems to me that what the Senator is doing with the Crapo amendment is actually trying to help people, trying to help the American people by taking this burden of $500 billion of taxes off of their backs, off of their shoulders, helping the American people. That is what I see he is trying to accomplish, at a time where with a gimmick they are going to start taxing immediately and when the taxes go into play—today is the 11th of December; in 20 days they are going to start collecting taxes for services they are not going to give for 4 more years. So it seems to me what is going on here with the Crapo amendment is it is saving the American people by keeping dollars in their pockets, keeping dollars in the pockets of the hard-working people of our country.

I am not the only one who is saying that. There is a new CNN poll out today that specifically asks the question—because the President has made a statement about the fact that you wouldn't see your taxes go up—Do you think your taxes would or would not increase if HARRY REID's bill is passed, and 85 percent of the American people in a CNN poll out today said they believe their taxes are going to go up; 85 percent of the American people.

Mr. CRAPO. I would say to my colleague from Wyoming that they are right, if this bill is not committed back to the Finance Committee to take those taxes out.

The next phrase in the amendment is—this is referring to a procedural motion, we call it—''that provides tax cuts for American workers and families.''

In other words, they don't want to send it back to committee to have a procedural motion put into place that would stop them from providing tax cuts for American families.

Again, it is rhetoric. Read the motion. The motion does not say to take out any benefits in the bill for anybody in America, unless you consider taxing people to be a benefit to them, but it simply says the taxes in the bill that are imposed on people that the President identified to be in the middle class and would be protected must be removed from the bill.

Mr. ROBERTS. Would the distinguished Senator yield for a question?

Mr. CRAPO. Yes.

Mr. ROBERTS. As Republicans, there is probably no principle that unifies us more than keeping taxes low on American workers and families, and I don't think our friends on the other side would dispute that notion. Indeed, the Democratic Party assumed control of the White House almost a year ago, as everybody knows, and seated large majorities here in the Congress. The one unmistakable distinction between the parties is this: Our party has respectfully opposed—I underline the word respectfully—opposed numerous efforts by the majority party to impose broad-based taxes increases on American workers and families. So one only need to look at the stimulus debate or the budget debate or the cap-and-trade legislation, and I could go on and on and on, more especially with the health care debate, and the bill before us.

Don't you follow from that general principle?

Mr. CRAPO. Absolutely. Again, I believe what is going on here with this new amendment is simply an effort to sort of divert attention from the real issue that is before the American people, the motion that was before the Senate, before we were forced by a procedural vote yesterday to move off the bill, and that is the question of the taxes in the bill.

The final phrase refers to a couple of the provisions in the bill that do have some support for improving the tax circumstances for small businesses and the affordability tax credit, meaning the tax credit that will be utilized to implement the subsidies for insurance.

Again, we can say it any number of times, but the fact is the motion they are trying to avoid does not deal with either of these provisions of the bill; it deals with those provisions in the bill that tax the American people.

Mr. BARRASSO. I am fine with voting on this, but it doesn't mean anything. I think it is absolutely meaningless, the Baucus amendment. I want to get to the heart of the matter, the meat of the matter, which is the Crapo amendment. That is the one I think makes the difference for the American people. If I were a citizen sitting at home watching C–SPAN on a Friday afternoon saying, what is going on in the Senate, what do I want, what is going to help me, I would say I want to call my Senator and say: Vote for the Crapo motion because that is the one that is actually going to help keep money in my pocket. The sense of the Senate? Oh, that is nice, but it is meaningless.

I am ready to vote right now for the Crapo motion because that is the one I think is going to help possibly save my job if I am at home and working. I am worried about unemployment in the country, I am worried about the taxes and the impact that is going to have. Because I worry if we don't get these taxes out of here, it is going to be a job killer for our Nation and for families all across this country, in Idaho, in Wyoming, in Kansas, in Kentucky. I think we have great concerns for the economy and the 10-percent unemployment. We need to get those taxes out of there now.

Mr. CRAPO. The Senator is, in fact, right. If you go back and try to get a little perspective on the entire debate, most Americans would agree that we need health care reform, but when they say that, they are talking about the need to control the skyrocketing costs of their health insurance and the costs of medical care, and they are talking about making sure we have real, meaningful access to quality health care in America.

In his statements, the President has many times commented about different parts of that. We remember when he said, If you like what you have, you can keep it. Well, we have seen that is not true, and there will be and have been already amendments to try to address those questions.

Remember when he said it is going to drive down the cost of health care and drive down your health care premiums? Well, we have learned now that it doesn't do that either; it actually drives up the cost of health care insurance and it is going to drive up the cost of medical care in this country.

Remember when he said you will not see your taxes go up? In fact, he pledged that if you were a member of the middle class, whom he defined as those making less than $250,000 as a couple or $200,000 as an individual, you would not see your taxes go up. Well, this motion is focused on that part of the debate. What did we see happen? Instead of letting us fix the bill, send the bill back to the Finance Committee to make the bill comply with the President's pledge, we saw two procedural maneuvers, one to maneuver off the bill, to get off the bill and move to the omnibus appropriations bill; secondly, to put up a bait-and-switch amendment that makes it look as though there is some kind of protection being put in place when, in reality, it is nothing more than a sense of the Senate relating to procedural motions that don't exist. I agree with my colleague from Wyoming and with my colleague from Kansas.

I see we have several of our other colleagues joining us here now. We need to keep the focus on health care and we need to keep the focus on those core parts of the bill that are critical to the American people.

Before I ask my colleague from Kansas if he wishes to make any other comments, I will reiterate the point that my colleague from Wyoming made with regard to the American people's understanding of this issue. In that CNN poll that I believe showed over 60 percent—I think it was 61 percent—of the people in this country who do not want this bill to move forward because they are now understanding what it does, in that same poll, 85 percent of the people in this country believe that this pledge of the President is broken by this bill.

Mr. ALEXANDER. I wonder if I might ask the Senator from Idaho and the Senator from Kansas, both the Senators are on the Finance Committee, I believe, and have been working on this health care bill for a long time. It is typical of a big, complex bill such as this that it is difficult to pass, and you get a sense every now and then of whether it is likely to pass or unlikely to pass. This week has been a particularly difficult week for the bill. I have noticed the majority leader trying to create a sense of inevitability about the bill.

But, increasingly, it seems to me, with it becoming clear that with so much of it being paid for by new taxes, and then last night the chief actuary of the Centers for Medicare and Medicaid Services saying the cost is going up, premiums are going up; with the Mayo Clinic saying it is beginning to not take Medicare patients, and the idea of putting millions more Americans into a program already going broke which you are taking $1 trillion out of is a bad idea; I wonder if in all—and all this talk about history being made and the inevitability of this bill, that the Senator from Idaho might not think, looking back over this whole debate, that maybe there are a lot of different ways to make it—that maybe a growing number of Senators might be thinking—not saying yet—might be thinking that this bill would be an historic mistake and that all the king's horses and all the king's men are not going to be able to push this up over the top.

Mr. CRAPO. The Senator from Tennessee is right, and he has put his finger on one of the key issues that is going on here in the Senate that sometimes isn't highlighted as closely as I think maybe it should be. That is, while we are talking about the need to make sure this bill does not raise taxes on the middle class, to make sure that the bill does not increase the cost of health insurance premiums, and to make sure that we maintain quality of health care and don't cut Medicaid and Medicare, the real battle here is an effort to create a legacy to essentially put the government in control of the health care economy. That is the debate. That is the legacy. That is the history that those who are pushing the bill are seeking to make, and they are seeking to make it at the expense of those on Medicare, of those of the taxpayers in America; and of the costs, the cost curve that they said they want to drive down, dealing with the cost of our health care.

I see our leader is here.

Mr. MCCONNELL. I say to my friends from Tennessee and Idaho, December 11, 2009 may be remembered as the seminal moment in the health care debate for those who are writing about what finally happened on this issue. There were two extraordinary messages delivered on this very day on this health care issue. They were delivered from CMS and from CNN. CNN told us how the American people felt about it: 61 percent, as the Senator from Idaho pointed out, telling us please don't pass this bill. A week ago, Quinnipiac said 14 percent more disapproved than approved; the week before Gallup said 9 percent more disapproved than approved. We can see what is happening here: widening public opposition.

And then CMS, the actuary, the independent government employee who is an expert on this, says this bill, the Reid bill, doesn't do any of the things it is being promoted to accomplish. So two important messages on December 11 delivered from CNN and from CMS.

Mr. ROBERTS. Would the Senator yield?

Mr. CRAPO. Yes.

Mr. ROBERTS. I wish to thank our distinguished leader for pointing that out. It has been a seminal event. As I said before, I have the privilege of being chairman of the Rural Health Care Caucus. There are probably 30 of us in a bipartisan caucus to try to protect and improve the rural health care delivery system. I took that report by Mr. Foster, who is the actuary of CMS, and said, this is required reading. I made the point that if you mention CMS to a beleaguered hospital administrator or a member of the board or any medical provider—doctor, nursing home, home health care, hospice; even hospice is cut in regard to the cuts—they know if a CMS representative is knocking on the door, that is a lot like sending a cold shiver down their spine thinking it is Lizzie Borden. Of all of the agencies that now are shining the light of truth into darkness in regard to the nature of this bill in increased costs, and yes, rationing—no, it is not a scare tactic—CMS is that agency. It would be amazing if we could get CMS to report back on, if we knew what it was—the media reports are how we get the information on this new iteration of a bill where allegedly we are going to add in people from 55 years old into the Medicare system. You do that, and now all of a sudden even the national organizations, let alone the State provider associations who have been opposed to this, to say, Whoa, we can't do that. That is going to break the system.

What I wish to point out and what I think is another piece of information that has sort of been overlooked, the CBO has estimated the cost to the Internal Revenue Service to implement taxes and penalties and enforce them—I am talking about the IRS now, not CMS, but the IRS that is going to implement and administer and enforce taxes and penalties on the bill—that cost is $10 billion estimated by CBO. That would double the budget size of the IRS. We have to train these people, and then you have to figure out what kind of questions they are going to ask of employers and employees in regard to the fines and the fees, you have to read the fine print. The American people understand this tremendous tax increase is going to be administered by the IRS and that is not going to be a happy circumstance. But those two things that the leader has brought out are absolutely primary in this debate.

I think a side-by-side is a straw man. I think it is very clear about that. I am happy to comment on that further. I wish to give others an opportunity to speak.

Mr. ALEXANDER. If I can make a short comment, I thank the Senator from Idaho for his leadership on taxes. But Senator MCCONNELL's comment about those two events on December 9—the poll from CNN and the report from the Centers for Medicare and Medicaid Services chief actuary—made me think about the immigration bill 2 years ago, in 2007. There were a lot of our best Senators working to pass comprehensive immigration bill, including Senators MCCAIN, KENNEDY, KYL, MARTINEZ, Members on both sides of the aisle, who worked very hard to do it. There seemed to be a sense of inevitability that that bill might pass. The President was even behind it.

But then it began to have so many problems, and the red flags began to pop up just like they are popping up with this comprehensive health care bill. There came a time, perhaps much like December 10, when the sense of inevitability was replaced by a sense that we were making a historic mistake, and a bill that got on the floor with 64 votes only had 46 to get off.

I have a feeling this bill, the more we learn about it, the wiser thing to do is to let it fall of its own weight. Then we can start over, step by step, to reearn the trust of the American people by reducing health care costs. We can do that. That is the sense I have.

I appreciate the Republican leader's observation about those important events on the 9th.

Mr. CRAPO. Mr. President, I agree with my colleagues. I think the comment of our leader is very insightful. As you start seeing the evidence mount, and the fact that the American public is understanding the weight of this mounting evidence about this legislation, we could be at the tipping point right now, where it has become so evident that the purpose behind health care reform has not only been missed by this legislation, but it has been made worse—the objectives.

I point to this chart, the cost curve. When you talk to most Americans about what they believe the purpose behind health care reform is, the vast majority say it is to control the skyrocketing costs. Well, those who are promoting the bill say it does that, it bends that cost curve. Which cost curve? Is it the size of government? That goes up $2.5 trillion in the first full 10 years of implementation. The cost of health care—the CMS report came out, it is about the 10th report, but this is from the actuary of the Medicare and Medicaid system who analyzed this independently, and he says health care costs are going to go up, not down.

The CBO said the cost of insurance is going to go up, not down. The Federal deficit—they say the bill doesn't make the Federal deficit go up. In fact, regarding that, the only way they can claim that is if they implement their budget gimmicks of delaying implementation of the bill for 4 years on the spending side, while raising taxes now, or if they raise hundreds of billions in taxes and cut Medicare by hundreds of billions of dollars.

These things are starting to be understood by the American people. That is why I believe we are starting to see those kinds of answers in the polls. It is not just the CNN poll, as the leader knows. Many polls are showing the American people get it.

Mr. ROBERTS. Will the Senator yield for another question?

Mr. CRAPO. Yes.

Mr. ROBERTS. I would like to get back to the side-by-side amendment allegedly being offered by the chairman of the Finance Committee, the Senator from Montana. I said straw man, and that is pretty harsh, but I intend it to be. We have seen how, if the language is examined, the amendment, at a minimum, is a red herring. You can fairly say the amendment, rather, has no other purpose than to facilitate a strong argument.

On Tuesday, when Senator CRAPO laid down his amendment, the majority didn't show us this side-by-side amendment until shortly before we thought—and they thought—we were going to vote. So that very limited notice makes you think it may be more likely to distract from or muddy the clear question the Senator from Idaho brought; that is, the motion to commit before the Senate. The motion was designed to be to be straightforward, and the Senator did that.

A vote for the motion is a vote to send the Reid amendment and underlying bill back to the Finance Committee. Under the motion, the Finance Committee would report back a bill that eliminates the tax increases on middle-income taxpayers. One could not say it anymore simply. That is what the motion does. The other bill is a straw man.

After the remarks by the distinguished leader, I would say this may be a seminal event. I think that is one of the key votes where the other side could start to realize this and start to finalize this without all the rhetoric and ideology and philosophical support for this bill, and they could start the road back, if you will, of doing it in a step-by-step, thoughtful way—doing it, meaning real health care reform.

I commend the Senator. Again, this side-by-side is a straw man. The Senator is clear in what he wants to do. Under the Senator's motion, the Finance Committee would report back a bill that eliminates the tax increases for middle-income taxpayers. We can restart the debate in a bipartisan way, where we can agree on many common goals. I thank the Senator.

Mr. CRAPO. I thank my colleague. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. REED). Thirty minutes.

Mr. CRAPO. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Republican leader is recognized.

Mr. MCCONNELL. Mr. President, this follows along further with my colleagues who were discussing the CMS report.

Americans, of course, were told the purpose of reform was to lower costs, to bend the so-called cost curve down. But the report released last night by the administration's own independent scorekeeper, as we have been discussing on the floor of the Senate, shows the Reid bill gets a failing grade.

The chief actuary is the person the administration depends on to give its straightforward, unbiased analysis of the impact the legislation would have. This is an independent expert. It is the official referee, if you will. So this is quite significant.

According to CMS, the Reid bill increases national health spending. According to CMS, there are new fees for drugs, devices and insurance plans in the Reid bill and they will increase prices and health insurance premiums for consumers.

According to CMS, claims about the Reid bill extending the solvency of Medicare are based on the shakiest of assumptions.

According to CMS, the Reid bill creates a new long-term insurance program, commonly referred to around here as the CLASS Act, that CMS actuaries found faces a ''very serious risk of becoming unsustainable.''

The CMS found that such programs face a significant risk of failure.

The Reid bill pays for a $1 trillion government expansion into health care, with nearly $1 trillion in Medicare payment cuts.

All of this, I continue to be quoting from the CMS report.

The report further says the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning a significant portion of the increased demands for Medicaid services would be difficult to meet.

The CMS actuary noted the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

The CMS actuary also found that roughly 20 percent of all Part A providers—that is hospitals and nursing homes, for example—would become unprofitable within the next 10 years as a result of these cuts. As a result of those Medicare cuts, 20 percent of hospitals and nursing homes would become unprofitable within 10 years.

The CMS actuary found that further reductions in Medicare growth rates through the actions of the independent Medicare advisory board, which advocates have pointed to as a central linchpin in reducing health care spending, ''may be difficult to achieve in practice.''

The CMS further found the Reid bill would cut payments to Medicare Advantage plans by approximately $110 billion over 10 years, resulting in ''less generous benefit packages'' and decreasing enrollment in Medicare Advantage plans by about 33 percent. That is a 33-percent decrease in Medicare Advantage enrollment over 10 years.

What should we conclude from this CMS report? The report confirms what we have known all along: The Reid plan will increase costs, raise premiums, and slash Medicare.

That is not reform. The analysis speaks for itself. This day, this Friday, as we were discussing yesterday, is a seminal moment. We have heard from CMS, the Government's objective actuary, the bill fails to meet any of the objectives we all had in mind. We also heard from CNN about how the American people feel about this package: 61 percent are opposed; only 36 percent are in support.

The American people are asking us not to pass this, and the Center for Medicaid Services' actuary is telling us it doesn't achieve the goals that were desired at the outset.

How much more do we need to hear? How much more do we need to hear before we stop this bill and start over and go step by step to deal with the cost issue, which the American people thought we were going to address in this debate?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CASEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CASEY. Mr. President, we are in our discussion of health care. We have been focused on a couple of major goals. The obvious goals that I think are a major part of the legislation we are debating are controlling costs, the goal of providing better quality of care, providing health care to millions of Americans—tens of millions, really—who would have no chance to get that kind of coverage without this legislation, and also the concern we have about not only controlling costs, but we have legislation on the floor that actually reduces the deficit by $130 billion and beyond the 10 years by hundreds of billions.

One of the concerns we have is that in the midst of a health care debate about numbers and the details of the programs is that we also do not forget that some parts of our health care system work well but often might need an adjustment or an amendment or a change that would benefit a vulnerable population of Americans who do not have the kind of coverage or protection or peace of mind they should have.

One of the more successful parts of our health care system as it relates to new parents, especially new mothers and new children, is what is known by the broad category of nurse home visitation programs. They have been enormously successful over many years.

I have an amendment I filed for this health care bill called the nurse home visitation Medicaid option amendment. It sounds a little complicated, but it is actually rather simple. It is part of what we need to do in the next couple of days and weeks as we complete our work on health care.

One point to make initially is that we know these nurse home visitation programs work. They get results for new parents, new mothers, and have positive benefits to a new mother and her children.

We all have had the experience, if we are parents, of the anxieties of what it is like to be a new parent but especially what a new mother goes through—all of the anxiety. It is not limited to one income group. No matter what income you are, no matter what background, it is a challenge to fully understand what it is like to have a baby and to care for that child appropriately. That is one of the underlying concerns we have.

In our health care system, we have to do everything possible to give that child a healthy start in life, and the best way to give a child a healthy start is to make sure his or her mother—and hopefully both parents—is able to handle the pressures and manage the anxieties that so many new parents have.

The amendment I filed supports optional nurse home visits. That means that if someone chooses not to take advantage of this program, obviously, they do not have to. The amendment simplifies the process for providers of nurse home visitation to seek Medicaid reimbursement. Some will say there is Medicaid reimbursement now. Yes, there is, but it gets complicated to a point where a lot of States are not getting the full benefit of that reimbursement. This amendment will impact the lives of Medicaid-eligible pregnant women and their children, and the impact is profound. The amendment is cosponsored by Senator GILLIBRAND of New York. It will allow States the option to seek more adequate reimbursement for nurse home visitation services. Again, a State is not forced to seek greater reimbursement, but I believe a lot of States could and should take advantage of this kind of an option.

In Pennsylvania, we have been trying to do this for years, even in the midst of having very effective nurse home visitation programs. One can just imagine how valuable that is for a new mother, that they can get advice and help from a nurse or another kind of professional and get them through the early days and weeks of being a new parent.

I believe a State such as Pennsylvania that has had a track record of these kinds of programs that have a direct and positive impact on children and their families, their mothers especially, should be able to take advantage of this, as I am sure many other States.

The amendment helps States cut through the redtape and allow these evidence-based nurse home visitation services—let me say those words again: ''evidence-based.'' This is not some theory; this is not some maybe—let's try to create a program. These programs work. The evidence is, in a word, irrefutable over many years that these nurse home visitation programs work. We want to allow States to be reimbursed under a State Medicaid option.

We have about 30 years of research to back up the following claims. Let me give four or five points.

We start with a category for every 100,000 families who are served by nurse home visitation programs or nurse-family partnership programs—all in that same category.

For every 100,000 families, 14,000 fewer children will be hospitalized for injuries and 300 fewer infants will die in their first year of life. That alone, that number alone is worth making sure States have this option. What is the price of saving 300 infants a year out of 100,000 families? It is incalculable. There is no value we could put on that kind of lifesaving as well as down the road saving money.

Let me give a couple of other examples.

For every 100,000 families served by these nurse home visitation-type programs, 11,000 fewer children will develop language delays by age 2. That is a profound impact on the child—his or her ability to achieve in school and then his or her ability to develop a high skill and therefore contribute positively to our economy. There is no price one can put on 11,000 new children learning more at a younger age.

Out of 100,000 families, 23,000 fewer children will suffer child abuse and neglect in the first 15 years of life. Again, there is no way we can quantify that with a number or budget estimate. But I would like to say we support strategies around here that are evidenced-based and scientifically based to make sure children are not abused, that they live through the first couple years of their lives when they are at risk of dying.

One more statistic. Out of the 100,000 families we use as a measurement, 22,000 fewer children will be arrested and enter the criminal justice system in the first 15 years of their lives. Just like the statistic about the first year of life and surviving the first year of life or not having in this case 23,000 more children suffer child abuse and neglect, these are impossible to measure. In a sense, it is the measure itself that we save children's lives, we make them healthier. They and their families are able to contribute more to society.

This is the right thing to do to give our States the option—just the option—of seeking greater reimbursement for these important services. I have seen it firsthand.

Many years ago—it must be at least 10 years ago—in Pennsylvania, I actually went to the home of a brand-new mother, a lower income mother in northeastern Pennsylvania. We walked in the door, with her permission, with the nurse who was working with her after she left the hospital with her new baby. There is no way to put into words how valuable that relationship was between a new mother and a nurse, between a new mother and a health care professional to give her the start in any circumstance but especially if a new mother has financial pressures which are extraordinary and almost unbearable for some new mothers or has pressures as it relates to her husband or boyfriend, whoever is part of her life. Sometimes there is violence. Sometimes there are other pressures that some of us cannot even begin to imagine, in addition to the obvious pressure of being a new mother, being a new parent, and wanting to do the right thing.

These programs, as the evidence and science tell us, work to give new mothers peace of mind and to give States the ability to directly and positively impact the lives of that new mother and her child.

So we should give States this option, and that is why I urge my colleagues to support the nurse home visitation Medicaid option amendment.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I ask unanimous consent that following my remarks Senator BROWN of Ohio and then Senator LEMIEUX of Florida be recognized in that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, each day it seems there is a new analysis of the Democratic proposal on health care that suggests it is not such a great idea. Today, a devastating report was made public by the Obama administration itself—the Department of Health and Human Services—and their group that is in charge of Medicare and Medicaid. It goes by the initials CMS. Specifically, the Chief Actuary, Richard S. Foster, of the Centers for Medicare and Medicaid Services, issued a report about the effect of the Reid legislation on health care as it pertains to a whole variety of things—the cost of the legislation, the effect it is going to have on taxes, on premiums, on benefits, the cost with respect to Medicare and the kinds of things that will occur to beneficiaries in Medicare, and so on. It is a complete report by a person who I think all would agree is not only qualified to speak to these things but also quite objective, as the chief actuary of CMS. He reached a number of very interesting conclusions, and I want to briefly discuss eight of them.

The first thing is that he noted his estimates were actually not a full 10-year estimate, and I will quote what he said here.

> Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10-year cost for the proposed legislation.

The reason that is important is we have been saying here for quite a long time that you can't just look at the first 10 years in order to see the full impact of this legislation because for the first 4 years most of the benefits don't exist. They are simply collecting taxes and fees and revenues, and then is when the benefits kick in, as a result of which, when they say it is all in balance, it is in balance because they are collecting money for 10 years but they only have to pay for benefits for 6 of those 10 years. So the real question is: What does it cost over the first full 10 years of implementation? And it turns out that is about $2.5 trillion.

We have known this, and we have made the point. I think even the chairman of the Finance Committee has acknowledged the $2.5 trillion if you take the first 10 years of implementation. But I think it is good to actually have that confirmed now by the Chief Actuary of CMS.

Secondly, a point I have been making all along is that when the President said repeatedly: If you like your insurance, you get to keep it, that is not true; and it is not true for a variety of reasons under the bill, and again this report confirms what we have been saying is in fact true; namely, that a number of workers who currently have employer-sponsored insurance would lose their coverage. In addition to that, seniors who are enrolled in private Medicare plans, which are known as the Medicare Advantage plans, would lose benefits, and many of them would no longer be covered.

Let me read two quotations, first relative to employer-sponsored insurance; and, second, people who are on Medicare Advantage plans. I am quoting now.

> Some smaller employers would be inclined to terminate their existing coverage, and companies with low average salaries might find it to their and their employees' advantage to end their plans. The per-worker penalties assessed on nonparticipating employers are very low compared to prevailing health insurance costs. As a result, the penalties would not be a significant deterrent to dropping or forgoing coverage.

What does that mean? The employer under this bill has an obligation to provide insurance to his or her employees. If they don't do that, then they pay a penalty. The problem is that the penalty is much less than the cost of buying the insurance. So what we have been saying all along, and what the CMS actuary confirms here, is that in a lot of cases, small employers—and particularly companies with low average salaries—will find it to their advantage to drop the insurance coverage and have their folks go into the so-called exchange programs. The penalty these employers pay will be much less than what they are paying now to provide insurance.

So these folks who are very happy with the insurance they have right now are not going to be very happy when they get something substantially less than that through the so-called exchange. They may like the coverage they have now, but, unfortunately, what the President promised, that they would get to keep it, is not true. And this is confirmed by what I read to you.

What about folks on Medicare Advantage? These are senior citizens above 65 who are on Medicare, and what they have chosen to participate in is the private insurance coverage component of Medicare called Medicare Advantage. Here is the quotation.

> Lower benchmarks would reduce Medicare Advantage rebates to plans and thereby result in less generous benefit packages. We estimate that in 2015, when the competitive benchmarks would be fully phased in, enrollment in Medicare Advantage plans would decrease by about 33 percent.

Everybody has acknowledged there would be a reduction, but there has been little debate about how much it would be. Our initial projections are borne out by the CMS actuary—a decrease in enrollment in Medicare Advantage by about 33 percent. That is a third. This is important to me because 337,000 Arizonans participate in Medicare Advantage—almost 40 percent of all our seniors. And a third of them, if this works across the board, are going to lose their plan because of this. In any event, they are all going to lose benefits because of ''the result in less generous benefit packages.''

This hasn't been much in dispute, because the Congressional Budget Office itself has described precisely how much the benefit packages will be reduced by, and it is 90-some dollars. It is from 130-some dollars in actuarial value down to 40-some dollars in actuarial value, which is a huge reduction, obviously. So reduction in benefits; a third of the people no longer on Medicare Advantage. The bottom line, whether you are privately insured through your employer or you are a senior citizen in Medicare Advantage, you are not going to be able to keep the benefits and the plan you like and have, notwithstanding the President's commitment to the contrary.

Third, Medicare cuts. We have been talking a lot about Medicare cuts, and my colleagues on the other side say: Well, we don't think that the Medicare cuts are the way you describe them. Seniors are still going to have access to doctors and so on. This report is devastating in blowing a hole in that argument. Let me quote a couple of the things they say.

> Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and, absent legislative intervention, might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

This is what we have been predicting. If you impose extra costs and mandates on the people who are providing the care—whether it be the hospitals, the physicians, home health care, or if you are taxing something such as medical devices—all of those impose costs on the people who are providing these medical benefits. What the CMS actuary is saying here is that the combination of those things would potentially jeopardize access to care for the beneficiaries. There aren't going to be as many of these people in business to provide care for an increasing number of people.

Let me go on with the quotation that I think will make this clear:

Simulations by the Office of the Actuary suggest that roughly 20 percent of Part A providers [hospitals, nursing homes, home health] would become unprofitable within the 10 year projection period as a result of the productivity adjustments.

In other words, 20 percent of the hospitals, home health care folks and others are not going to be profitable anymore. They are going to be out of business because of the burdens that are being placed upon them in this legislation. What happens when you have the baby boomers going into the Medicare Program? Under the latest idea from the other side of the aisle, we are even going to have 30 million potentially being able to join Medicare—the folks from 55 up to 65—but you are going to reduce by 20 percent the number of folks to take care of them—the hospitals and home health care and so on. Obviously, you have a big problem. Access will be jeopardized, as the actuary says.

This is where rationing, in effect, comes in. There simply aren't enough doctors, hospitals, and others to care for the number of patients who want to see them. This is how it starts. First, long delays, long lines, long waiting periods before you can get your appointment, and eventually denial of care because there is simply nobody to take care of you.

This is exacerbated by something else in the legislation, which is the fourth point here. The actuary talks about the independent Medicare advisory board. What is happening is that Medicare is being cut in three different ways: one, Medicare Advantage, which I mentioned; two, the providers are being slashed in the reimbursements that they are receiving; and three, this legislation creates an independent Medicare advisory board that is supposed to make recommendations on how to effect huge reductions in the cost of Medicare, and the primary way they will do that is by reducing the amount of money paid to doctors, to hospitals, to others who take care of patients. That, obviously, will also result in less care for the senior citizens.

If the cuts are so drastic that Congress says no, we are not going to do them, then you don't have the savings the bill relies upon to pay for the new entitlement. So one of two things happens, and they are both disastrous: Either you have these huge cuts, which are devastating for access to care or the cuts are so unrealistic they do not go into effect, in which case the legislation can't be paid for. And then I guess you are going to have to raise taxes on the American people because you aren't able to effect the savings from Medicare.

Here is what the actuary says:

In general, limiting cost growth to a level below medical price inflation alone would represent an exceedingly difficult challenge.

That is the challenge being put before them here—an exceedingly difficult challenge.

Actual Medicare cost growth per beneficiary was below the target level in only 4 of the last 25 years, with 3 of those years immediately following the Balanced Budget Act of 1997; the impact of the BBA prompted Congress to pass legislation in 1999 and 2000 moderating many of the BBA provisions.

What does that mean? In 1997, Congress passed the Balanced Budget Act, which drastically reduced the payments to these providers in order to cut the cost of Medicare. Three out of the four years in which the costs were reduced, it was immediately following that legislation. But starting in 1999 and into the year 2000, Congress realized those cuts were too deep; you were not going to get doctors and hospitals to continue to take care of patients if we continued to cut what they were paid for their services. So the cuts were ameliorated and, as a result, the savings were not achieved.

What the actuary is saying here is if that same thing happens again, if these cuts are so drastic we actually don't let them go into effect because they would be self-defeating, then you will not have the savings that have been promised and scored here as enabling this legislation to be so-called ''budget neutral.'' It won't be budget neutral. So as I said, one of two things will happen, and both are bad. Either you have the cuts, which are devastating for seniors or you don't have them and they are devastating to taxpayers.

Five is Medicare expansion. I think all of us agree on both sides of the aisle that Medicaid is a very vexing problem because the States have to pay for a percentage of the Medicaid patients and the States are generally in very poor financial shape and they do not need more people added to the Medicaid rolls that can't pay for them.

My Governor was in town earlier this week, and she said: Please, please, don't add people to the Medicaid rolls and expect the States are going to be able to pay for them. Let me read a couple of the quotes from this actuarial report.

Providers might tend to accept more patients who have private insurance (with relatively attractive payment rates) and fewer Medicare or Medicaid patients, exacerbating existing access problems for the latter group.

That latter group, of course, is the Medicaid group. The problem is that reimbursement is so low for Medicaid, frankly, they are the last patients a doctor sees, and their care is not the best. If we are going to provide care for a group of people, we need to do it right. Unfortunately, this is how rationing begins if you don't have enough money to do it right.

Then let me conclude with this quotation.

[This] possibly is especially likely in the case of the substantially higher volume of Medicaid services, where provider payment rates are well below average.

And that is my point.

Therefore, it is reasonable to expect that a significant portion of the increased demand for Medicaid would be difficult to meet, particularly over the first few years.

What they are saying is that there aren't going to be the physicians and the other people to care for the Medicaid patients here and, as a result, the promise we have made to these people we are not going to be able to keep.

Enrolling in Medicaid does not guarantee access to care by a long shot.

No. 6. Again, this is something we have been saying. This is not really too controversial because the Congressional Budget Office has said the same thing that the Actuary here says. But it is always good to have a backup opinion. This is the tax on drugs, on devices, and on insurance plans. We have all been saying of course those costs are passed on to the consumer in the form of higher premiums or, in a couple of cases, higher taxes. That is what is demonstrated:

Consumers will face even higher costs as a result of the new taxes on the health care sector.

I might just say before I read the quotation here, it doesn't make any sense to me why, in order to pay for this new entitlement, you would tax the very people you want to take care of. Tax the doctors, insurance companies, device manufacturers that make the diabetes pump or the stent for a heart patient or some other device that improves our health care these days? Let's tax them? I am saying maybe you want to tax liquor or tobacco or something, but why tax the things that make people healthier? Go figure. That is what the bill does.

Here is what the Actuary says:

We anticipate that such fees would generally be passed through to the health consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of approximately $11 billion per year in overall national health expenditures, beginning in 2011.

Remember how we were going to drive costs down with this bill? We weren't going to be paying as much? The Actuary says:

We anticipate such fees would be generally passed through to the consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of $11 billion a year.

This is going backward, not forward. The whole idea was to reduce costs and premiums. Instead, they are going up.

No. 7. Here is another tax. We are going to tax the higher premium plans. In response—this is a 40-percent tax on these plans. What will employers do? According to the Actuary:

. . . employers will reduce employees' health care benefits.

That makes sense. If you are going to tax an insurance plan that has a lot of good benefits in it, then the employer is going to say: Rather than paying that tax, I will reduce the benefits—precisely what CMS says. This is another case in which if you like what you have, sorry, you are not going to get to keep it. We are going to tax it. Then the employer is going to reduce the benefits.

Here is the quotation from CMS:

In reaction to the excise tax, many employers would reduce the scope of their health benefits.

This is exactly what we have been saying.

Here are seven specific ways in which the CMS Actuary, working for the Obama administration Department of Health and Human Services, has verified the complaints Republicans have been making about this legislation for weeks—that it will raise premiums, it will raise taxes, it will raise costs. It will raise the cost of health care. It will raise the cost to the government. It will provide fewer benefits. It will result in the transition of people from private insurance to the exchange which is created in here and will result in less access to care because there will be fewer providers to take care of more people. What a wonderful reform.

This is why, when I talk about this legislation, I do not talk of health care reform. I am reminded of the line from a novel in which the individual says:

Reform, sir? Don't talk of reform. Things are bad enough already.

Indeed, they are. We do have problems. One of those problems is premium costs going up.

I note that my colleagues in the House of Representatives on the Republican side offered an amendment which, according to calculations of the Congressional Budget Office and according to the House Republicans, would have actually reduced premiums by $3,000 a year for the average family rather than increasing them. Republicans have good ideas about attacking the specific problems we face today. What we do not need is something under the guise of reform which is so massive, so intrusive into our lives and, with all due respect, not well thought out in terms of its long-range implications.

What you end up with at the end of the day, according to CMS now, according to the Actuary of the U.S. Government Health and Human Services, CMS, it raises premiums, raises taxes, reduces access to care, increases the cost, and provides fewer benefits. I cannot imagine how we could go home at Christmastime and say to our constituents: This is what we are giving you for Christmas this year.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I rise to speak in opposition to a provision in the Patient Protection and Affordable Care Act that would impose a 40 percent excise tax on certain health insurance plans.

It is my strong belief that a benefits tax is the wrong way to pay for health reform legislation.

Beginning in 2013, this legislation would impose an excise tax of 40 percent on insurance companies and plan administrations for any health insurance plan that is above the threshold of $8,500 for singles and $23,000 for family plans.

The tax would apply to the amount of the premium in excess of the threshold.

This tax would not only be imposed on basic health benefits, it would be imposed if the combined value of basic benefits, dental benefits, and vision benefits reaches the $8,500 limit.

In other words, Americans would be better off without dental and vision coverage than with it.

How could a disincentive to dental and vision coverage be a good idea? The answer is, ''it's not.''

In subsequent years, increases in the benefit thresholds will be tied to the consumer price index plus one percent.

What this means is that more and more workers and employers will be affected in subsequent years.

In fact, the Congressional Budget Office, CBO, estimates that, by 2016, this benefits tax would affect 19 percent of workers with employer-provided health coverage.

CBO further projects that revenues resulting from the tax would increase by 10–15 percent every year in the second decade after the tax takes effect.

And though this appears to be a tax on insurance companies, we should not be fooled.

Insurance companies are likely to pass these costs onto their customers—forcing employees to pay higher premiums or encouraging employers to cut or limit coverage.

Health reform legislation should not penalize middle-income Americans who have forgone salary and wage increases in return for more generous health benefits.

I remember, as the Presiding Officer in his leadership in the Banking Committee remembers, during the auto discussions, when President Bush first moved to help the auto companies that were under such duress, many people on the other side of the aisle saw the legacy costs as something bad, the legacy costs the auto companies had. In fact, these legacy costs were benefits negotiated by unions. Those workers had been willing to give up present-day wages to have better health insurance and better pensions. This is the same kind of issue.

And health reform legislation should not encourage the elimination of existing health benefits.

Instead, health reform legislation should ensure that Americans who have negotiated good health benefits—including dental and vision coverage—are able to keep those benefits without punishment.

I have heard many of my colleagues argue that this excise tax will ''bend the cost curve'' of health care costs and expenditures.

However, the Commonwealth Fund found that ''there is little empirical evidence that such a tax wcould have a substantial effect on health care spending.''

And is makes no sense to bend the cost curve by compromising access to needed health services now—leading to higher health care costs later.

You are squeezing on a balloon, not changing the long-term trajectory of health spending.

To bend the cost curve, we need to identify and reward the provision of the right care, in the right settings, at the right time.

We need to target duplication, promote best practices, and clamp down on those who overprice health insurance and health care products and services—exploiting their role in ensuring the health of the American people.

We need to give Americans more purchasing power and inject more competition into the health care marketplace.

We don't need to reverse the clock on health care progress by discouraging Americans from having good health coverage.

There is so much that is critically important in health reform legislation—from delivery system reforms to prevention and wellness initiatives to provisions which strengthen Medicare to making insurance more affordable and accessible for all Americans—but this counterproductive tax on middle-income Americans is not a provision I can support.

That is why I have cosponsored an amendment with Senator SANDERS of Vermont that would eliminate this benefits tax and instead impose a surtax on the very wealthiest earners—those who benefitted so much from the Bush-era tax cuts.

Our amendment, as modified, would replace the benefits tax on health insurance plans with a 5.4 percent surtax on adjusted gross income for individuals who earn more than $2.4 million a year and couples who earn more than $4.8 million per year.

Instead of taxing middle class Americans for having good health coverage, our amendment would help address the disproportionate impact of the Bush tax cuts—which were outrageously tilted toward the wealthiest of the wealthy.

Multimillionaires and billionaires fared far better than middle-class families under the Bush Administration. Let's not continue that tradition in this Congress.

The PRESIDING OFFICER (Mr. KIRK). The Senator from Florida.

Mr. LEMIEUX. Mr. President, it is always good to follow my colleague from

Ohio. I rise to speak about the health care bill. I, specifically, wish to speak about this new report we have received from the Office of the Actuary from the Centers for Medicare & Medicaid Services. This report, unfortunately, confirms many of the problems we already knew. This report comes from an independent actuary who works in the very agencies that have to implement our Federal health care programs. This actuary has reviewed the proposal before us, the proposal that is intended to be health care reform. The review and report of this actuary shows significant problems with this proposal and why we must start over and take a step-by-step approach.

I had the opportunity to read this report this afternoon in my office, word for word, and go through it line by line. I hope all my colleagues do on both sides of the aisle. There are many troubling things this report shines light upon. First, the proposal we are debating increases the cost of health care. For Americans who are at home and might be watching this to see various Senators on the floor of this great body, they think the reason we are here is to reduce the cost of health care and to promote more access. Those are the two big goals. That is what the President told us. We are going to lower the cost of health care. This report shows, national health care expenditures are going to go up from 16 percent of the gross domestic product to 20 percent.

The chief actuary says, on page 4 of this report, we are going to spend $234 billion more on health care over the next 10 years. We are going to spend more on health care. We are not going to reduce costs. We are going to increase costs.

Moreover, the Federal Government, in its provision of health care, is going to spend $366 billion more in health care provisions. We are told this proposal is budget neutral or it actually creates less of a deficit. It cuts the deficit of the Federal budget. But as has been revealed this week—and this is just gimmickry—the taxes start before the benefits. For 4 years, we pay the taxes and the benefits don't start until 2014. So 4 years of penalties without any benefits. This is similar to if you were to go buy a home and you went to buy the home and you said: We are going to live here for the next 10 years, and the real estate agent said to you: That is fine. You are just going to pay for the first 4 years, but you don't get to move in until 2014.

For families sitting around the kitchen tables, that is not how they balance their budgets. But that is this strange world that Washington is, that you can set up this budget gimmickry in order to get it to so-called budget neutrality. The actuary of CMS recognizes that. He says, on page 2, most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period.

> The cost estimates shown in this memorandum do not represent a full 10-year cost of the proposed legislation.

It is not budget neutral. It is just a gimmick.

The second problem the actuary points to is, it jeopardizes access to care for seniors. My colleagues have been saying this for the past couple weeks. You can't take $½ trillion out of Medicare and have it not hurt the provision of health care for seniors. This plan is going to gut Medicare as we know it. It severely cuts funding for Medicare.

In this report, it goes through all the cuts to Medicare Advantage, to home health, to hospice. The actuary goes through all these cuts. What does the actuary conclude is going to be the result? Our friends on the other side of the aisle say this is not going to cut Medicare; it is going to save Medicare. How do you take $½ trillion out and save Medicare? The actuary understands it. He knows that doctors who provide services under Medicare for seniors or for the poor under Medicaid aren't going to take these reimbursements anymore. They will not see people and provide health care. So it is not health care reform if the doctor will not see you.

Right now, in this country 24 percent of doctors aren't taking Medicare; 40 percent are not taking Medicaid. The actuary says providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and might end their participation in the program, possibly jeopardizing access to care for beneficiaries.

The second reason we are doing health care reform, access to care, is going to be hurt for seniors by this bill. That is on page 9, for those who are following at home. By the way, we are going to put this report on our Web site at lemieux.senate.gov. If you want to read it, you can read all the details.

The next thing the actuary discovers as a problem with this bill is that for the 170 to 180 million Americans who have health insurance, your premiums are going to go up, not down. We are not going to bend the cost curve down. Health care will be more expensive, more expensive than if we were to do nothing and not implement this bill at all.

The chief actuary says premiums for the government-run plan, for example, would be 4 percent higher than for private insurers. So we don't achieve that goal. What is going to happen when we put all this burden on businesses? Because we know that under this program we are going to penalize businesses if they don't provide health insurance. We are going to penalize individuals if they don't provide health insurance. So what are small businesses going to do who are hardly making it now? In Florida, we have 11 percent unemployment. Our small businesses are suffering.

The actuary says on page 7, some small employers would be inclined to terminate their existing coverage. So they will drop their health insurance. You are an employee in a small business, they drop your health insurance. Now you must go buy the Federal program, where you will be subsidized. What does that mean? It means every man and woman will be paying taxes to help pay for health care insurance, taxes we can't afford, spending we can't afford, not in a world where we have a $12 trillion budget deficit. We are just pushing the cost off on our children and grandchildren. That is when this deficit is going to come home to roost.

The actuary also says the excise tax on high cost employer-sponsored health insurance is going to cause employers to scale back coverage. So if you have one of the better health care plans, the Cadillac plans, your employer will not be incentivized to give you less coverage, less benefits, less access. Is that what we thought reform was supposed to be?

Now we also know from the actuary we are going to raise taxes in this bill. As my friend, the Senator from Arizona, was saying, we are going to tax device makers. We are going to tax pharmaceutical companies, the implements and devices and medicines that save our lives. We know there is $64 billion in penalties in this bill. The actuary says, on page 5, if you are a small business or you are an individual and you don't provide the insurance, you are going to be taxed, penalized, $64 billion in penalties.

The actuary says:

> We anticipate that such fees would generally be passed to health consumers—

These are the taxes on the devices and the drugs—

> in the form of higher prices and higher insurance premiums.

I also wish to address one point before concluding. My friends on the other side have been saying there are not going to be any cuts to benefits because we will run a more efficient system. There is going to be less fraud and abuse and waste.

We all want that. That makes a lot of sense. But the actuary, in evaluating this—and he talks about it on page 12—finds that the cuts and the reductions are negligible. In fact, he can't even sufficiently provide evidence to know what the estimates of savings might be; at best, $2.3 billion for all the efficiency and savings. Remember, this is a $2.5 trillion program. There is $2.3 billion in savings, like 1 percent. So it is not the efficiency that is going to make up the cuts; it is going to be a cut in benefits to seniors. It will be higher insurance premiums for Americans. That is not health care reform.

It is why the Wall Street Journal called this bill the worst bill ever. In talking about this new proposal to expand Medicare and drop the age for Medicare, this morning the Wall Street Journal corrected itself and said that is even worse than the worst bill ever.

Similar to the Presiding Officer, I am new to this Chamber. I have been here about 90 days. It is a great honor to serve in the Senate, representing 18 million people from Florida, but it is also a little bit frustrating. The way the Senate works is not the real world. It is not like moms and dads who sit around the kitchen table and try to figure out how to make ends meet and they can only spend as much money as they take in. That is not how we work in this institution. We don't work in a reasonable way.

My colleague from Utah will speak in a minute. He was on the floor the other night talking eloquently about how, when you do real reform, you get 80 Senators to vote on a proposal. If this bill passes, 60 Democrats will vote for it, 40 Republicans will not. If just one Democrat would feel their conscience and not vote for this bill, we could start over. We could work together in a bipartisan way and help those 45 million Americans who don't have health insurance. But we wouldn't do it by robbing from Medicare. We wouldn't do it by raising taxes. We wouldn't do it by creating a $2.5 trillion new program.

I have struggled to try to figure out a way to explain to the people how bad this bill is. I know it is hard. You are sitting at home, around the kitchen table, trying to understand what Washington is up to. It is hard to understand. I have thought about cultural references and historical references, maybe even things in pop culture that I could use as an analogy to try to explain what is going on in the Senate. The only thing I can think of is the ''Wizard of Oz.'' In the ''Wizard of Oz,'' Dorothy gets thrown into the tornado in sort of an alternate reality, a place that doesn't play by the same rules. That is sort of the Congress. Dorothy and the lion and the tin man and the scarecrow are told: Follow the yellow brick road, you will get there. All your answers will be solved. Everything will be great.

That is sort of like this phrase we hear around here: Make history, make history, just get it done. Pay no attention to the cuts in Medicare. Pay no attention to the Medicaid you will put on the States that can't afford it. Pay no attention to the higher taxes and the higher premiums people will have to suffer under. Similar to the scarecrow, who doesn't have a brain, it is not very thoughtful to put more expenses and more taxes on the States with Medicaid when they can't afford it. Similar to the tin man, who doesn't have a heart, it is not very thoughtful to take money out of health care for seniors. Similar to the lion, who has no courage, we don't have the courage to do what is right and work together in a bipartisan way. When you get to the end of the yellow brick road and you get to Oz, you find out there is nothing behind the curtain.

This isn't health care reform. We need to start over, and we need to get it right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of my distinguished colleague from Florida. People need to listen to him. I am grateful to have him in the Senate, a fine man he is and a good example to all of us. I appreciate his remarks.

I rise to explain why I believe the Reid health care bill is not only bad policy for this country but also undermines the Constitution and the liberty it makes possible. I urge my colleagues to resist two errors that can distort our judgment and lead us down the wrong path. Those errors are assuming that the Constitution allows whatever we want to do and ignoring this question altogether.

We have only the powers the Constitution grants us because liberty requires limits on government power and we have our own responsibility to make sure we stay within those limits.

James Madison said that if men were angels, no government would be necessary, and if angels were to govern men, no limits on government would be necessary. Because neither men nor the governments they create are angelic, government and limits on government are both necessary to protect liberty—not just government but limits on government as well. Those limits come primarily from a written Constitution which delegates enumerated powers to the Federal Government.

Here is how the Supreme Court put it just a few years ago. This is in United States v. Morrison in 2000, quoting Marbury v. Madison—one of the most important decisions ever by the Supreme Court, probably the single most important decision—back in 1803:

> Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. ''The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written.''

The important word there happens to be ''limits.''

No one likes limits, least of all politicians with grand plans and aggressive agendas. It is tempting to ignore or forget the limits the Constitution imposes on us by pretending the Constitution means whatever we want it to mean. But we take an oath to support and defend the Constitution, not to make the Constitution support and defend us. The Constitution cannot limit government if government controls the Constitution.

In April 1992, during a debate on welfare reform legislation, the senior Senator from New York, Mr. Moynihan, with whom I served, made a point of order that an amendment offered by a Republican Senator was unconstitutional. Here is what Senator Moynihan said:

> We do not take an oath to balance the budget, and we do not take an oath to bring about universal peace, but we do take an oath to protect and defend the Constitution of the United States.

Applying that sage advice today, we do not take an oath to reform the health care system or to bring about universal insurance coverage, but we do take an oath to protect and defend the Constitution of the United States.

For the past 8 years, my friends on the other side of the aisle insisted that the Constitution sets definite and objective limits that the President must obey. The Constitution, they said, does not mean whatever the President wants it to mean. Compelling circumstances or even national crises, they said, cannot change the fact that the Constitution controls the President, not the other way around.

It is easy to insist that the Constitution controls another branch of government, that the Constitution does not mean whatever another branch of government wants it to mean. The real test of our commitment to liberty, however, is our willingness to point that same finger at ourselves.

I ask my colleagues, is the Constitution rock solid, unchanging, and supreme for the executive branch but malleable, shape-shifting, and in the eye of the beholder for the legislative branch?

A principle applied only to others is just politics, and politics alone cannot protect liberty. We must be willing to say that there are lines we may not cross, means we may not use, and steps we may not take.

The Constitution empowers Congress to do many things for the American people. Just as important, however, is that the Constitution also sets limits on our power. We cannot take the power without the limits.

I want to address several constitutional issues raised by this legislation.

The first is the requirement in section 1501 that individuals obtain not simply health insurance but a certain level of insurance. Failure to meet this requirement results in a financial penalty which is to be assessed and collected through the Internal Revenue Code.

We hear a lot about how Senators on this side of the aisle are supposedly defending the big, evil insurance companies, while those on the other side of the aisle are defenders of American families. This insurance mandate exposes such partisan hypocrisy.

Let me just ask you one simple question. Who would benefit the most from the unprecedented mandate to purchase insurance or face a penalty enforced by our friends at the Internal Revenue Service? The answer is simple. There are two clear winners under this Draconian policy and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty or impose similar ones to create new streams of revenue to fund more out-of-control spending. Second, the insurance companies are the most direct winners under this insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger windfall for corporations than the Federal Government ordering Americans to buy their products.

Right now, States are responsible for determining the policies that best meet the particular demographic needs and challenges of their own residents. That is the States. Massachusetts, for example, has decided to implement a health insurance mandate, while Utah has decided not to do so. This bill would eliminate this State flexibility so that the Federal Government may impose yet another one-size-fits-all mandate on all 50 States and on every American. I cannot think of anything more at odds with the system of federalism that America's Founders established, a system designed to limit government and protect liberty.

I can understand why this mandate is so attractive to those who believe in an all-powerful Federal Government. After all, raising the percentage of those with health insurance is easy by simply ordering those without insurance to buy it. But while government may choose the ends, the Constitution determines the permissible means. That is why one of the basic principles is that Congress must identify at least one of our powers enumerated in the Constitution as the basis for any legislation we ultimately pass.

The health insurance mandate is separate from the penalty used to enforce it. The only enumerated power that can conceivably justify the mandate is the power to regulate interstate commerce. For more than a century, the Supreme Court treated this as meaning what it says. Congress cannot use its power to regulate commerce in order to regulate something that is not commerce. Congress cannot use its power to regulate interstate commerce in order to regulate intrastate commerce.

In classic judicial understatement, the Supreme Court has said that ''our understanding of the reach of the commerce clause . . . has evolved over time.'' Indeed, it has. Since the 1930s, the Supreme Court has expanded the power to regulate interstate commerce to include regulating activities that substantially affect interstate commerce. That is obviously far beyond, by orders of magnitude, what the commerce power was intended to mean, but that is where things stand today, and some say it justifies this health insurance mandate in this bill.

Using the Constitution or even the Supreme Court's revision of the Constitution as a guide requires more than a good intention fueled by an active imagination. The Supreme Court has certainly expanded the category of activities—get that word ''activities''—that Congress may regulate. But every one of its cases has involved Congress seeking to regulate just that: activities in which people have chosen to engage. Even the Supreme Court has never abandoned that category altogether and allowed Congress instead to require that individuals engage in activities, in this case by purchasing a particular good or service. The Court has never done that.

Let me mention just three of the Supreme Court's commerce clause cases. In its very first case, Gibbons v. Ogden in 1824, Thomas Gibbons had received a Federal license to operate a steamboat between New Jersey and New York and wanted to compete with Aaron Ogden, who had been granted a steamboat monopoly by New York State. In Wickard v. Filburn, Roscoe Filburn used the winter wheat he planted on his Ohio farm to feed his livestock and make bread for his own dinner table. In the winter of 1942, he grew more wheat than allowed under the Agricultural Adjustment Act and challenged the resulting fine. And in Hodel v. Surface Mining & Reclamation Association, companies challenged a Federal statute regulating surface coal mining.

These cases have two things in common. The Supreme Court upheld Federal authority in each case, but each case involved an activity—remember the word ''activity''—in which individuals chose to engage. There would have been no Gibbons v. Ogden if Thomas Gibbons had not chosen to operate a steamboat. Congress could regulate his activity but could not have required that he engage in it. There would have been no Wickard v. Filburn if Roscoe Filburn had not chosen to grow wheat. Congress could regulate his activity but not have required that he engage in it. And there would have been no Hodel case if companies had not chosen to mine coal. Congress could regulate their activity but could not have required that they engage in it.

The key word in the commerce clause is the word ''regulate,'' and the key word in every Supreme Court case about the commerce clause is the word ''activity.'' Regulating an activity in which individuals chose to engage is one thing; requiring that they engage in that activity is another.

The Congressional Budget Office examined the 1994 health care reform legislation which also included a mandate to purchase health insurance. Here is the CBO's, the Congressional Budget Office's, conclusion. This is August 1994, the Congressional Budget Office:

> A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy a particular good or service. . . .Federal mandates typically apply to people as parties to economic transactions, rather than members of society.

That is pretty important language. In other words, Congress can regulate commercial activities in which people choose to engage but cannot require that they engage in those commercial activities.

Just a few months ago, as Congress once again is considering a health insurance mandate, the Congressional Research Service examined the same issue. Here is what the Congressional Research Service concluded. This was in July 2009. The CRS concluded:

> Whether such a requirement [to have health insurance] would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or service.

Can Congress use this clause to require an individual to purchase a good or service?

One thing did change in the legal landscape between 1994, when CBO called the health insurance mandate ''unprecedented,'' and 2009, when CRS called it ''novel.'' The Supreme Court twice found that there are limits to what Congress may do in the name of regulating interstate commerce.

In United States v. Lopez, the Court rejected a version of the commerce power that would make it hard ''to posit any activity by an individual that Congress is without power to regulate.''

If there is no difference between regulating and requiring what people do, if there is no difference between incentives and mandates, if Congress may require that individuals purchase a particular good or service, why did we even bother with the Cash for Clunkers Program? Why did we bother with TARP or other bailouts? We could simply require that Americans buy certain cars or appliances, invest in certain companies, or deposit their paychecks in certain banks. For that matter, we could attack the obesity problem by requiring Americans to buy fruits and vegetables and to eat only those.

Some say that because State governments may require drivers to buy car insurance, the Federal Government may require that everyone purchase health insurance. That is too simplistic, that argument. Simply stating that point should be enough to refute it. States may do many things that the Federal Government may not, and if you do not drive a car, you do not have to buy car insurance. This legislation would require individuals to have health insurance simply because they exist, even if they never see a doctor for the rest of their lives.

The defenders of this health insurance mandate must know that they are on shaky constitutional ground. The bill before us now includes findings which attempt to connect the mandate to the Constitution. I assume they are the best arguments that this unprecedented and novel mandate is constitutional.

Those findings fail in at least four ways.

First, the findings say that the requirement to purchase health insurance will add millions of new consumers to the health insurance market. I cannot dispute the observation that requiring more people to purchase health insurance will result in more people having health insurance. I think that seems quite self-evident. But the question is not the effect of the mandate but the authority for the mandate. Liberty requires that the ends cannot justify the means. The findings also fail to establish that the insurance mandate is constitutional by failing to offer a single example—a single precedent, a single case—in which Congress has required individuals to purchase a particular good or service or the courts have upheld such a requirement. The cases I described are typical, and similar examples are legion. Every one involves—every one of those cases I have cited—the regulation of activity in which individuals choose to engage. Requiring that the individual engage in such activity is a difference not in degree but in kind.

The findings also fail to answer the question by observing that States such as Massachusetts have required that individuals purchase health insurance. As I noted regarding the example of car insurance, our Federal and State system allows States to do many things that the Federal Government may not. That is one of those limits on the Federal Government that is necessary to protect liberty.

The findings fail to answer the question by mistakenly focusing on whether Congress may regulate the sale of insurance. That misses the point in two respects. Simply because Congress may regulate the sale of health insurance does not mean that the Congress may require it. Simply because Congress may regulate the sale of health insurance does not mean that Congress may regulate the purchase of health insurance. This legislation requires you to believe that nonactivity is the same as activity; that choosing not to do something is the same as choosing to do it; that regulating what individuals do is the same as requiring them to do it. That notion makes no common sense, and it certainly makes no constitutional sense. If Congress can require individuals to spend their own money on a particular good or service simply because Congress thinks it is important, then the Constitution means whatever Congress says it means and there are and will be no limits to the Federal Government's power over each and every one of our lives.

That version of Federal power will be exactly what the Supreme Court in Lopez prohibited; namely, that there would be no activity by individuals that the Federal Government may not control. Neither the power to regulate interstate granted by the Constitution nor the power to regulate activities that substantially affect interstate commerce granted by the Supreme Court go that far. They don't go that far.

The American people agree. A national poll conducted last month found that 75 percent of Americans believe that requiring them to purchase health insurance is unconstitutional because Congress's power to regulate commerce does not include telling Americans what they must buy. By a margin of more than 7 to 1, Americans believe that elected officials should be more concerned with upholding the Constitution regardless of what might be popular than enacting legislation even if it is not constitutional.

Some defenders of this legislation such as the House majority leader have said that Congress may require individuals to purchase health insurance because it can pass legislation to promote the general welfare. The only thing necessary to dismiss this argument is to read the Constitution. Read the Constitution. That dismisses this argument. Just read it. Read the Constitution. Article I refers to general welfare as a purpose, not as a power. It is a purpose that limits rather than expands Congress's power to tax and to spend. The requirement that individuals purchase health insurance is not an exercise of either the power to tax or the power to spend, and so even the purpose of general welfare is not connected to it at all. Needless to say, it makes no sense to include in a written Constitution designed to limit Federal Government power an open-ended, catchall provision empowering Congress to do anything it thinks serves the general welfare.

If America's Founders wanted to create a Federal Government with that much power, they could have written a much shorter Constitution, one that simply told Congress to go for it and legislate well. That is what they could have done. They didn't do that, thank goodness.

The Heritage Foundation has just published an important paper arguing that this health insurance mandate is both unprecedented and unconstitutional. It is authored by Professor Randy Barnett, the Cormack Waterhouse Professor of Legal Theory at the George Washington Law Center; Nathaniel Stewart, an attorney with the prestigious law firm of White & Case, and Todd Gaziano, Director of the Center for Judicial and Legal Studies at the Heritage Foundation.

I ask unanimous consent to have the conclusion portion of the Legal Memorandum published by the Heritage Foundation printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONCLUSION

In theory, the proposed mandate for individuals to purchase health insurance could be severed from the rest of the 2,000–plus-page ''reform'' bill. The legislation's key sponsors, however, have made it clear that the mandate is an integral, indeed ''essential,'' part of the bill. After all, the revenues paid by conscripted citizens to the insurance companies are needed to compensate for the increased costs imposed upon these companies and the health care industry by the myriad regulations of this bill.

The very reason why an unpopular health insurance mandate has been included in these bills shows why, if it is held unconstitutional, the remainder of the scheme will prove politically and economically disastrous. Members need only recall how the Supreme Court's decision in Buckley v. Valeo—which invalidated caps on campaign spending as unconstitutional, while leaving the rest of the scheme intact—has created 30 plus years of incoherent and pernicious regulations of campaign financing and the need for repeated ''reforms.'' Only this time, the public is aligned against a scheme that will require repeated unpopular votes, especially to raise taxes to compensate for the absence of the health insurance mandate.

These political considerations are beyond the scope of this paper, and the expertise of its authors. But Senators and Representatives need to know that, despite what they have been told, the health insurance mandate is highly vulnerable to challenge because it is, in truth, unconstitutional. And political considerations aside, each legislator owes a duty to uphold the Constitution.

Mr. HATCH. I also wish to share with my colleagues a letter I received from Dr. Michael Adams and attorney Carroll Robinson. They are on the faculty of the Barbara Jordan Mickey Leeland School of Public Affairs at Texas Southern University. Mr. Robinson, a former member of the Houston City Council, was named by the Democratic Leadership Council in 2000 to its list of ''100 to Watch.''

I ask unanimous consent their entire letter, which is dated October 25, 2009, be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. Let me share just an excerpt from these two people. This is an excerpt from Michael Adams, Ph.D., and Carroll G. Robinson, Esquire, from the Barbara Jordan and Mickey Leland School of Public Affairs, Texas Southern University:

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

That is pretty impressive stuff.

It is certainly possible to achieve the goal of greater health insurance coverage by constitutional means, not unconstitutional means. I am quite certain, however, that those means are politically impossible.

Liberty requires that the Constitution trump politics, but in the legislation before us, politics trumps the Constitution.

Another provision in this legislation that is inconsistent with the Constitution is section 9001, which imposes an excise tax on high-cost employer-sponsored insurance plans differently in some States than in others. The legislation imposes a tax equal to 40 percent of benefits above a prescribed limit but raises that limit in 17 States to be determined by the Secretaries of the Treasury and Health and Human Services.

My colleague from Ohio, Senator BROWN, spoke against this provision on policy grounds earlier.

The Constitution allows Congress to impose excise taxes but requires that they be "uniform throughout the United States." This is one of those provisions that will be dismissed with pejorative labels such as archaic by those who find it annoying. But it is right there in the same Constitution that we have all sworn to uphold. We have all sworn that same oath to protect and defend, and we are just as bound today to obey it.

Frankly, a good test of our commitment to the Constitution is when we must obey a provision that limits what we want to do.

The Supreme Court has had relatively few opportunities to interpret and apply the uniformity clause, but its cases do provide some basic principles which I think easily apply to the legislation before us today. The Court has held, for example, that a Federal excise tax must be applied "with the same force and effect in every place where the subject of it is found."

The Congress has wide latitude in determining what to tax and may tailor a regional solution to a geographically isolated problem, but laws drawn explicitly in terms of State lines will receive heightened scrutiny. By the plain terms of the legislation before us, insurance plans providing a certain level of benefits in one State will be taxed while the very same plans providing the very same benefits in another will not be taxed. We do not yet know what States will be treated differently, but we do know, according to this bill, that 17 of them will. That actually makes the constitutional point more clearly by identifying the State-based discrimination more starkly. Congress may decide to tax insurance plans with benefits that exceed a particular limit, but the tax must have the same force and effect wherever that subject of the tax is found. That is the clear meaning of the constitutional provision and the clear holding of the Supreme Court's precedents. Taxing the same insurance plans differently in one State than in another is the opposite of taxing them uniformly throughout the United States.

I commend to my colleagues the work of Professor Thomas Colby of the George Washington University Law School, whose comprehensive work on the uniformity clause was published in volume 91 of the Virginia Law Review.

I asked the Congressional Research Service to look at this uniformity clause issue. Its report confirmed that this differential tax on high-cost insurance plans is drawn explicitly along State lines and that a court will more closely scrutinize the reasons for the State-based distinction. It also concluded that Congress has not articulated any justification for singling out certain States for different treatment. I have raised this issue over and over throughout the process of developing and considering this legislation. I serve on both of the Senate committees that are involved in this process. In fact, I can say I have served on three: not only the HELP Committee—the Health, Education, Labor and Pensions Committee—but also the Finance Committee, as well as the Judiciary Committee that, for some reason, has some great interest in the Constitution. I have never heard any justification for singling out certain States for different tax treatment.

The attitude seems to be that this is what the majority wants to do, so they are going to do it no matter what the Constitution says. That may be politically possible, but that does not make it constitutionally permissible.

Other legal analysts and scholars who are examining this health care takeover legislation are raising additional constitutional objections. Professor Richard Epstein of the University of Chicago School of Law, for example, focuses on provisions that restrict insurance providers' ability to make their own risk-adjusted decisions about coverage and premiums. He argues these restrictions amount to a taking of private property without just compensation and in violation of the fifth amendment.

Others have observed that the legislation requires States to establish health benefit exchanges. It does not ask, cajole, encourage, or even bribe them. It simply orders State legislatures to pass legislation creating these health benefit exchanges and says if States do not do so, the Secretary of Health and Human Services will establish the exchanges for them. How thoughtful.

But as the Supreme Court said in FERC v. Mississippi in 1982:

> This Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations.

The Supreme Court reaffirmed a decade later in New York v. United States that "the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States."

In that case, the Court struck down Federal legislation that would press State officials into administering a Federal program.

More recently, in Printz v. United States, the Supreme Court stated:

> We have held, however, that State legislatures are not subject to Federal direction.

Yet this legislation does what these cases said Congress may not do. It commands States to pass laws, it regulates States in their capacity as States, and it attempts to make States subject to Federal direction.

Let me return to the principles with which I began. Liberty requires limits on government power. Those limits come primarily from a written Constitution which delegates enumerated powers to Congress. We must be able to identify at least one of those enumerated powers to justify legislation, and those powers should not mean whatever we, in our delightful wisdom, want them to mean.

Those principles lead me to conclude that Congress does not have the authority to require that individuals purchase health insurance, and that Congress cannot tax certain health insurance plans in some States but not in others.

These, and the others I have mentioned, are only some of the constitutional issues raised by this legislation. Any of these, and others I have not mentioned, could well be the basis for future litigation challenging this legislation should it become law.

Writing for the Supreme Court in 1991, Justice Sandra Day O'Connor reminded us:

> The Constitution created a Federal Government of limited powers.

America's Founders, she wrote, limited Federal Government power to "protect our fundamental liberties."

Here is the way Justice O'Connor put it, writing for the Supreme Court in New York v. United States in 1992:

> But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location, as an expedient solution to the crisis of the day.

That is a pretty remarkable statement. I could not have said it better myself. Those are either principles we must obey or cliches we may ignore.

If the Constitution means anything anymore, if it does what it was created to do by not only empowering but, more importantly, limiting government power, then now is the time to stand on principle rather than to slip on politics.

I yield the floor.

EXHIBIT 1

OCTOBER 25, 2009.

Hon. ORRIN G. HATCH,
U.S. Senator.

DEAR SENATOR HATCH: We support reducing the cost of health insurance and expanding access to quality, affordable prevention, wellness and health care services for all Americans. Despite our support for health care reform that empowers consumers, we have serious concerns about the constitutionality of the individual mandate requirement being proposed by Congress.

At least one scholar has argued that the individual mandate requirement is constitutional because Congress has unlimited authority under the Commerce Clause to regulate the economic activity of individual American citizens no matter how infinitesimal.

We do not agree with that position. In Philadelphia, the Framers established a federal government of limited powers. If Congress has unlimited power under the Commerce Clause to regulate the economic activity of citizens, then the Constitution is no longer (and never was) "a promise . . . that there is a realm of personal liberty which the government may not enter."

We believe that this promise still exists and is not a mirage. The Supreme Court said so, at least as recently as 2003.

It has also been argued that the individual mandate is constitutional because citizens have "no fundamental right to be uninsured" or "to decline insurance." These are strawman characterizations intended to distract attention from the real constitutional question: Does Congress have the power to mandate citizens buy a specific good or service or be subjected to a financial penalty for not doing so?

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

There are cases that say Congress can tell consumers what products to buy if they choose to buy, but no cases that say Congress can mandate that a citizen must buy a particular good or service or be fined for not doing so.

The individual mandate requirement directly burdens the fundamental meaning of being an American citizen as embodied in the Ninth Amendment reaching back through the Declaration of Independence to the Magna Carta and its expansion coming forward from the 3/5ths Clause of Article I of the Constitution and the Court's Dred Scott decision to the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments as well as through Supreme Court decisions related to these amendments, legislation adopted pursuant to them, the Bill of Rights and its penumbra.

The Supreme Court has ruled that freedom of speech, expression and association are constitutionally protected. Our right to freely move around the country is also constitutionally protected. Congress can regulate the size of political donations but has no authority to tell a citizen which political candidate or party they can lawfully contribute to.

Like political donations, how a citizen legally spends their money in the market place is clearly a form of expression and association that requires strict scrutiny, or heightened, protection.

Calling the individual mandate a tax raises another constitutional concern. Under the mandate, American citizens are essentially subject to a financial penalty simply for being a citizen of the United States residing in a state of the Union. It is essentially an existence fee, a fee for existing.

Under the Fourteenth Amendment, the definition of citizenship does not include any requirement that Americans pay a ''tax'' simply because we are citizens. In fact, the Twenty-Fourth Amendment and related Supreme Court decisions expressly prohibit financially burdening the rights of citizens to prevent them from exercising a right of citizenship. Citizens have a liberty interest in deciding when to buy a good or service and which to buy form the legally available options.

The Supreme Court has said, ''Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and . . . laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.''

We believe that reducing the cost of health care insurance and expanding coverage can be achieved without opening the constitutional Pandora's Box of the individual mandate requirement.

Sincerely,

CARROLL G. ROBINSON, Esq.
MICHAEL O. ADAMS, PhD.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I am delighted to follow my colleague from Utah. I am pleased he has raised these constitutional issues, which I think are significant to this bill. The idea that we could have a constitutional mandate to buy health insurance, to me, is highly questionable under our rights under the role of the Federal Government and under the Constitution. Senator HATCH has been on the Judiciary Committee for many years and he understands these issues very well.

We are now on our sixth iteration of the health care reform bill. This one talks about expanding Medicare, basically as one of the key components of solving the problem. Here is a quote from the Mayo Clinic I found, and others have also been cited. I found this interesting, succinct, and accurate:

Any plan to expand Medicare, which is the Government's largest public plan, beyond its current scope does not solve the Nation's health care crisis, but compounds it. It is also clear that an expansion of the price control of the Medicare payment system will not control overall Medicare spending or curb costs. This scenario follows the typical pattern for price control, reduced access, compromised quality, and increasing costs anyway. We need to address these problems, not perpetuate them through health reform legislation.

That was the Mayo Clinic. It is clearly not the way to go to solve the crisis or the problems. It probably hastens the day Medicare goes bankrupt, which is set to happen in 2017, 7 years away.

I want to talk about the possibility that this health care bill puts this very early piece of economic recovery that we are having at risk. The latest reports on unemployment provide some hope that our battered economy may be showing some tentative signs of economic recovery, as the job loss continues to slow. Most of this is based off of monetary policy. We are seeing some of this taking place.

Consumer confidence is still low. Unemployment hovers at 10 percent, and over 7 million jobs were lost since the beginning of the recession.

It should be clear that any potential recovery is incredibly fragile. That being the case, Congress and the administration should focus like a laser beam on policies that encourage economic growth and put Americans back to work. That seems to be obvious.

Instead, though, the administration and the Democratic-controlled Congress have taken up crucial months with a proposed revamping of our entire health care system that will cost nearly $2.5 trillion over the next 10 years, to be paid for by new taxes and employer mandates, and it will impose a grave risk to a sustained rebound of our Nation's economy. This hurts our economic recovery.

Not only that, but the Democratic health care bill includes some positively perverse incentives that would discourage hiring, work, saving, and even marriage. Again, it would discourage hiring, work, savings, and marriage. Higher taxes, more employer mandates, and disincentives to job creation, productivity, and family formation are hardly the prescription for the growth our economy so desperately needs right now.

Both the House and the Senate bills would, for instance, increase the already existing penalty on work faced by many low-income families who receive tax and in-kind benefits from government welfare programs. We already heard this. Health insurance subsidies in the legislation for individuals and families in poverty would tack on an additional 12 to 20 percent to marginal tax rates, which already approach 40 to 50 percent for families receiving a variety of benefits for those with low incomes. This would result in marginal tax rates of 50 to 60 percent for most affected families.

If working more hours or obtaining better paying jobs results in more than half of those additional earnings being taken away as a result of taxes or a reduction in benefits—if you are a low-income individual, you are working more, you are getting more money coming in, but your benefits from the government are reduced. So if you are taking 50 to 60 percent away in a reduction of benefits or in taxes, the incentive to work harder or to invest in an education is greatly reduced. That is obvious on its face. Yet it is in this bill.

This is not the only work disincentive in the bill. It is common for teenagers and college students to obtain jobs so they can have some spending money on their own or to help with their educational expenses. The Senate bill penalizes the families of these younger workers by including their wages in benefit eligibility calculations. For many low-to-moderate income families, the inclusion of their wages could mean a significant increase in their cost of health insurance or even in them losing thousands of dollars of health insurance subsidies altogether. That is in the bill.

And more harmful to the economy, potentially, are the incentives directed at employers. Both the House and Senate bills include temporary subsidies to small businesses to encourage them to offer employer-sponsored health insurance. As the number of employees increase or as salaries increase, the amount of the credit provided to the business decreases. The structure of this subsidy not only discourages employers from hiring new employees, but it also discourages them from increasing employees' salaries. We don't want those sorts of disincentives in any bill.

Ironically, the incentives in the bill would even work to encourage employers to drop health insurance coverage for individual employees or eliminate insurance coverage altogether. The Senate bill would cap employee contributions to insurance premiums at 9.8 percent of their income. If an employer offered a policy that required employees to pay more than this, the employee would be eligible to purchase insurance through the new ''health care exchanges.'' The employer would have to pay a fine. Since, in many cases, that fine is considerably less than the additional insurance costs the employer would incur if they retained coverage, many businesses concerned about the bottom line would be enticed by the bill to stop providing any health insurance coverage. So they are actually enticed here to drop health insurance coverage—another thing we don't want to see happen.

Furthermore, employers who offer flexible spending accounts or FSAs will be encouraged to stop providing these tax-free medical spending accounts for their employees. Under the Senate Democrats' bill, FSA contributions will be included in the total cost of employees' health insurance benefits for the purpose of calculating the proposed tax on high-cost health plans—the so-called Cadillac health care plans. Adding an FSA contribution could push the total cost of health benefits above the high-cost threshold for many workers, which will result in the employer being liable for a portion of the 40 percent high-cost plan's tax. As more and more plans become subject to the high-cost plan's tax, it will be in the employer's best interest to eliminate FSA offerings altogether. That is another disincentive we don't want to see happening.

The proposed legislation would also create new marriage penalties across the income spectrum. We have been working for some years to do away with the marriage penalty. Marriage is a good and solid institution that helps so much in this Nation. Yet it puts in a marriage penalty, penalizes people for getting married; it is built into this legislation. These penalties can be so large that, in some cases, couples would have to forgo marriage in order to avoid thousands of dollars in new taxes. The penalties are significant. Low- and moderate-income families often have limited savings as well. Given the already significant marriage penalties in low-income benefit programs, it seems ironic that the government would create yet another program that penalizes low-income individuals for getting married.

Currently, if they are on public assistance and they get married, their combined incomes often move a couple out of the support they receive for their families, whether it is health support, housing, or food support. By getting married, they often lose their benefits. Instead of taking them away, we ought to be helping them form solid families. That sort of disincentive is built into this health insurance plan as well, where you actually put in disincentives for low-income couples to get married. In other words, to be able to get the health insurance subsidy, they may have to forgo marriage. That is not the sort of incentive we want in the system and in the bill. We are trying to take it away in the welfare programs, but to add another piece to low and moderate-income couples is the wrong way for us to go.

That the Democratic health care legislation would set the United States on a path to a single-payer government-run health insurance system of the sort found in Europe and Canada is bad enough, but even more troubling is the fact that these proposals would create a series of perverse incentives ultimately harmful to workers, businesses, and the entire economy. The Senate must reject this poorly conceived, ruinously expensive scheme and get back to the business of helping our economy recover.

I have talked to many people across the United States and particularly in Kansas, many people who are deeply concerned about this economy and the perverse things coming out of Washington. While they might start considering investing in their small business, putting some income or something out to be able to grow and create jobs, people are holding back and saying: I don't know how many more taxes you will put on us or what the health insurance plan will look like. I don't know what cap and trade will do on raising energy costs.

They are holding back. These perverse economic signals, and the discussion of them in Washington, is perversely affecting the economy. It is hurting the economic recovery. If you put these pieces into place statutorily, you are hurting savings, hurting hiring, hurting marriage formation, and you will further hurt an already very tentative recovery from taking place.

This is a bad medicine for the economy. The idea that you would expand Medicare to take care of that is a terrible idea. You will be hurting a program that already is not financially solvent in the long term and is looking at something like $30 trillion of unfunded obligations already on its books. That alone, if you expand it back to age 55, plus the provider community—the American Medical Association and the American Hospital Association are opposed to this expansion of Medicare. They don't get full reimbursement of costs right now. With the talk about bringing it back to age 55, you will be sweeping a large number of people into Medicare, so you are sweeping in a lot of people who are already in private insurance plans. When they are pulled out of private insurance which pays at the full rate to the provider community, you are taking those resources away from the provider community, from doctors and hospitals. That is why you are seeing the American Medical Association and the American Hospital Association come out against this proposal on Medicare expansion. How on Earth would it ever be paid for, when the program is already not on a stable financial track?

The Federation of American Hospitals stated this:

> The FAH is strongly opposed to this proposal. A Medicare buy-in would involve Medicare rates, would be controlled by CMS, and would crowd out older workers with private coverage and may choose early retirement as a result. Such a policy will further negatively impact hospitals.

In my rural State, in particular, it would have a huge negative impact on a number of the hospitals in my State.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, is there a unanimous consent order of business?

The PRESIDING OFFICER. There is not.

Mr. DURBIN. Mr. President, I rise to speak as in morning business.

I would like to say at the outset I respect very much my colleague from the State of Kansas. He and I have worked on many issues together. In fact, we traveled together to Africa, a memorable trip for both of us, I am sure, visiting the Democratic Republic of Congo, Rwanda, and meeting a lot of people in desperate straits. I thank him for that.

I know he is now preparing for another public career in the State of Kansas, with the blessing of the Kansas voters. But in the meantime, he continues to be a very important, vital voice in the Senate. I thank him for that as well.

We do disagree on health care reform. I know he has had a chance to explain his point of view. I will say I disagree with many of his conclusions about what we are about, what we are trying to accomplish.

This is the bill that is before us when we return to the health care reform debate. It is 2,074 pages long. It is the product of 1 year's work by two major committees in the Senate. The House of Representatives spent a similar period of time in three different committees working on it to come up with their work product, which they passed just a few weeks ago.

This is historic because we have been promising this and threatening this and talking about this for decades. It was Theodore Roosevelt who first raised the question about whether America could accept the challenge of providing health care for every citizen. That was over 100 years ago. Then, of course, Harry Truman, who, in a more modern era, issued the same challenge. He was confronted by his critics who said: He is talking about socializing medicine. Must be socialism that Harry Truman is proposing. The idea died.

Then, again, Lyndon Johnson raised it in the early 1960s. He was a master of the Senate, as he has been characterized in a book that has been written about him. He believed he had the power to make this happen to deal with the health care system across the board in America. It turned out he made a significant contribution with the enactment of Medicare and Medicaid but could not reach the goal of universal health care or comprehensive health care reform.

This President, President Obama, came to us and issued the same challenge. He said we have reached a point of no return. The current health care system in America is unsustainable, it is unaffordable, and the cost of health care goes up dramatically. Ten years ago, a family of four paid an average of $6,000 a year, $500 a month for health care insurance. Now that is up to twice that amount, $12,000 average for a family of four, $1,000 a month. In 8 years, with projected increases in costs, we expect that the monthly premium for the family of four to go up to $2,000 a month, $24,000 a year. We know that represents 40 percent of earnings for many people. That is absolutely unsustainable.

What we have tried to do, first and foremost, is address affordability. How can we make health insurance protection more affordable for more families? How can we start lessening the annual increase in premiums and actually help people by substantially cutting the cost of premiums for many families? It is a big challenge, and we have, I think, risen to the challenge with this bill.

The other side of the aisle has ideas, they have amendments, they have speeches, they have charts, but they do not have a comprehensive health care reform bill. They do not have a bill that has been sent over to the Congressional Budget Office, carefully read, and evaluated. It took weeks to do it. They do not have a bill that came back from the Congressional Budget Office, considered to be the neutral observer of action on Capitol Hill. They do not have a bill that came back from the CBO that has been characterized as actually reducing the deficit.

This bill, according to the Congressional Budget Office, will reduce America's deficit over the next 10 years by $130 billion and over the following 10 years another $650 billion. It is not just dealing with health care reform; it is dealing with the costs of health care to our government and reducing our expenditures by significant amounts. It is the largest deficit-reduction bill ever considered on the floor of the Senate.

Although the Republicans have many ideas, they do not have anything that matches this bill in terms of deficit reduction or bringing down the cost of health care. They have not produced a bill which will extend the reach of health insurance coverage to 94 percent of our people in this country, which this bill does.

For the first time in the history of the United States of America, 94 percent of our American citizens will have peace of mind knowing they have health insurance. Today, 50 million do not. This bill will take 30 million off the uninsured rolls and put them in insurance plans that can protect their families, and it will help them pay for the premiums. If people are making less than 400 percent of poverty—which in layman's terms is about $80,000 a year in income. If your family makes $80,000 or less, we provide in this bill that we will help you pay for your premiums. The lower your income, the more we will help pay.

If you are making, for example, as an individual, less than $14,000 a year, you will not pay for your health care. It will be covered by Medicaid, the program that is now nationwide, and you will not have to pay a premium. Then as you make more money, you will pay a little bit of a premium with help from this bill.

The Republicans have not produced a plan of any kind that deals with helping families of limited means, modest means, pay for their health insurance premiums. We have. The Congressional Budget Office has scored it. One of the major provisions in this bill—and one I think most people will identify with quickly—is the fact that health insurance reform is included too. There is a Patients' Bill of Rights in this bill. It basically says we should bring an end to the discriminatory practices of health insurance companies against American citizens. We know what we are talking about.

Friends of mine, a family I am closer to than any other family in Springfield, IL, has a son fighting cancer. He is a young man in his forties. He has young children in high school. He was diagnosed with melanoma just a few years ago. His oncologist has worked with him with chemotherapy and radiation and with the kind of treatment and drugs and surgeries he needed. As a result of it, he has gone through some tough surgeries and tough treatment. His oncologist said at one point: We have a drug we believe will help you. He gave him the drug, and the drug, in fact, arrested the development of his cancer.

Shortly after the drug was prescribed and administered, his health insurance company that he paid into for years came back and said: We will not cover that drug. The drug costs $12,000 a month. It is impossible for him, as the coach of a baseball team at one of our universities, to come up with that kind of money. His family borrowed money to pay for one of the treatments, and now they are suing the insurance company in the hopes that they can get coverage.

After all those years paying in, when they finally needed that coverage, they turned him down. I hope he wins that lawsuit. This is a very profitable insurance company. It is a company that should be paying, but they are not. That is one example of thousands we could talk about.

The purpose of this bill is to make sure a friend of mine, his family, and other families just like his have a fighting chance against these insurance companies. We say in this bill we are going to provide a way for protection for people with a preexisting condition; that if you have a history of high cholesterol or high blood pressure, if you have some cancer in your family, it is not going to disqualify you. You are still going to be eligible for health insurance, a policy you can afford.

We also say, when it comes to your children—you know how it is today, you learn the hard way—when your kids who are on the family plan reach the age of 24, they are off. We extend that to age 26, which I think is a little more peace of mind, particularly for students graduating from college looking for jobs these days. It is not easy. We want to make sure they are covered with health insurance while they are paying off their student loans and building their career. That is in this bill.

There is not a bill from the Republican side of the aisle that deals with the Patients' Bill of Rights. In fact, it is a rare Senator on the other side of the aisle who even stands and is critical of health insurance companies in the way they are treating people in this country.

I do not know if my friends on the other side of the aisle get back home enough to meet with some of these families. Surely they do. They must receive mail that tells them about these stories we have all heard about. You would think they would be endorsing our approach in this bill. Instead, they are critical of it from start to finish.

They talk a lot about taxes. I want you to know, under this bill, if you have a small business with 25 or fewer employees, we actually provide tax breaks to help you provide insurance for your employees. There are a lot of businesses, mom-and-pop businesses, for example, that cannot afford health insurance that will have a chance now because of tax breaks here.

Then, when it comes to paying for premiums, I mentioned earlier, if you make $80,000 or less, we provide tax breaks in helping you pay for it. The cost of it in tax breaks is $440 billion over 10 years. It is a huge amount of money we are providing to American citizens to give them a chance to pay for their health insurance premiums. All we hear from the other side is: Oh, this bill is going to raise taxes. It does raise some. It raises taxes on health insurance companies for what we call Cadillac health care policies.

We can debate for a long time whether that level of policy, $25,000, is a reasonable level or should be something different. But the fact is, it is a tax on the health insurance company. It will likely result in fewer policies that are that grand and that expansive being issued.

I think this is a bill that moves in the right direction. It is a bill that makes insurance more affordable. It is a bill that does not increase the deficit, it reduces it. It is a bill that gives people a fighting chance against health insurance companies that discriminate against their customers. It is a bill that extends the coverage of health insurance of 94 percent of Americans. It is a bill that looks at putting Medicare on sound footing. It adds 5 years of solvency to Medicare—5 years. There has not been a bill produced on the other side of the aisle that even adds 1 year, that I am aware of. It adds 5 more years of solvency. That is the reason why this bill has been supported by the American Association of Retired Persons. We have support of medical professionals, senior organizations, and consumer groups all across America. They know, as we do, we cannot wait any longer.

I also wish to make the point that the Senate bill offers significant savings for seniors. The CMS Actuary projects a net $469 billion in Medicare and Medicaid savings over 10 years, slightly more than the Congressional Budget Office. It extends the life of the Medicare trust fund, according to the Office of the Actuary, by 9 years. That is longer than anyone has projected in previous forecasts, but it is a significant increase, almost doubling the life of the Medicare trust fund over what it currently would be.

It reduces premiums by $12.50 a month by the year 2019 or $300 per couple per year. Slowing Medicare growth will lower health care costs for seniors as well as younger Americans. Not only will there be a premium savings, but coinsurance will fall as well.

The Senate bill slows the growth of health care costs. The Actuary report we have, for example, says, ‘‘ . . . Reductions in Medicare payment updates for providers, the actions of the Independent Medicare Advisory Board, and the excise tax on high-cost employer-sponsored health insurance would have a significant downward impact on future health care cost growth rates.’’

The bend in the health care cost curve is evident. Health care costs under the Senate bill begin to decline as cost savings begin to kick in.

I have not mentioned this bill focuses on prevention and wellness too. If there is one thing we need, it is to encourage people to take care of themselves and to get a helping hand for the tests they need to stay healthy and to monitor their conditions. This preventive care and wellness, though we have not been credited by the Congressional Budget Office, is an important element of this bill.

I think there is one thing on which we should all agree. The cost of health care, particularly for small businesses, is very difficult. On the Senate floor, both Democrats and my friends on the other side of the aisle have recognized small businesses are struggling to pay for health insurance. But there is a real difference. We have offered a solution, one that is comprehensive and one that has been scored and carefully analyzed by the Congressional Budget Office.

Unfortunately, that has not happened on the other side. Their approach is basically to criticize what we have proposed but to offer no alternative. If they are happy with the current system, I understand that. If they will concede that it is hard to produce a bill like this, I would understand that. But merely to criticize this without alternative, a comprehensive alternative that has been carefully analyzed, I don't think is a responsible approach to the serious problem that we face today.

There are real-life stories of people who have contacted me. One of them I will tell you about involves a small business. Right now we know that one sick employee of a small business can drive the cost of health care for the whole company to limits where they just can't afford it. My friends, Martha and Harry Burrows, whom I have met, are small business owners in Chicago, and they have to wrestle with this problem and try to run a successful business at the same time. When they opened their toy store, Timeless Toys, 16 years ago, they promised to provide health insurance to their full-time employees. Martha Burrows said:

> Since we were covered, we wanted to offer the same benefit to our employees.

But as their health care premiums have skyrocketed with leaps of more than 20 percent at a time, the commitment has taken its toll on their business. Providing health insurance to their full-time staff of seven meant cuts not only to profits but also to the wages of their employees. In general, the older employees faced even higher costs. We shouldn't put our Nation's employers in a position where the health costs of an older worker can make such a huge difference.

Marcia says:

> I don't like making decisions that way. I want to base hiring decisions on the quality of the person.

The legislation on the floor, incidentally, deals with the rating of premium costs for senior citizens, for example, and makes a fairer rating system. Currently, health insurance companies in America are exempt from the antitrust laws. Under a bill known as McCarran-Ferguson, passed in the 1940s, they are exempt, along with organized baseball, which means the insurance companies—health insurance companies and others—can literally sit down in a room and conspire, collude, agree on prices they are going to charge. If any other companies that were supposed to be competing did that in America they would be sued but not the insurance companies. So they can set premiums and agree on what the premiums will be, and they can divide up the market for the sale of their products, sending some companies to one town and some to another, making sure they do not compete against one another.

That is the reality of health insurance today. What we provide in this bill is protection against the ratings which discriminate against people because they are elderly or because they are women. We put limits to the rating differences that will be allowed in health insurance policies. There is no bill I know of from the Republican side that even considers or addresses that problem.

Mr. President, one of the issues that I have tried to focus on in the midst of this recession is our foreclosure crisis. Back in December of 2006, when the housing markets were humming along and the bankers and brokers were raking in money, the Center for Responsible Lending published a report called ‘‘Losing Ground.’’ That report, in December of 2006, estimated that nearly 2 million homes would be lost to foreclosure in the coming years due largely to shoddy subprime mortgages.

Here is what the Mortgage Bankers Association told the Washington Post when they heard of this study. It was authored by the Center for Responsible Lending.

> The report is 'wildly pessimistic' because most homeowners have prime loans and are not at financial risk.

That is what a senior economist at the Mortgage Bankers Association said in December of 2006. He went on to say:

> The subprime market is a small part of the overall market. Lending industry officials have said that regulatory action could injure the subprime market.

When he speaks of regulatory action, he means regulating these subprime markets.

On the floor of the Senate, I was involved in a debate with a Senator from Texas named Phil Gramm. I offered an amendment to a bankruptcy bill which Senator GRASSLEY and I worked on which said: If you are guilty of predatory lending, you will be precluded in bankruptcy from pursuing your claim. That was debated on the Senate floor, and debating on the other side against my amendment was Senator Phil Gramm of Texas, who said on the floor of the Senate:

> If the Durbin amendment passes, it will destroy the subprime mortgage market.

Well, my amendment failed by one vote, and the subprime mortgage market continued until it collapsed just a couple of years ago. I wish I had had another vote for my amendment.

At the time this debate took place in December of 2006, about 25 percent of home loans were subprime. So the mortgage bankers, unfortunately, misled the public about the state of the market at the time to wave away warnings about any crisis that might be following, and we all know what that has meant to this country.

I go back to that episode now because 3 years later, in 2009, we have had more than 2 million foreclosures, something the Mortgage Bankers Association said wouldn't happen. In fact, the Mortgage Bankers Association has recently announced that in the third quarter of this year, nearly one in seven families paying mortgages in this country were either behind on their payments or already in foreclosure—one out of seven people holding mortgages today. It is hard to imagine. That is the highest it has ever been.

The statement from the Mortgage Bankers Association said:

> Despite the recession ending in mid-summer, the decline in mortgage performance continues.

Three years ago, the rosy scenario they painted has now morphed into a much more serious situation which they cannot ignore. I have been talking about this foreclosure crisis since early in 2007. I stand here with some regret and say it is getting worse.

In Illinois, foreclosure filings in the six-county region around Chicago went up 67 percent in the last quarter. This isn't just a problem for the city of Chicago. New filings in Cook County, mainly suburban areas, were down 4.6 percent last quarter. The problem, unfortunately, has migrated to the suburbs. All of the so-called ''collar counties'' around Chicago have experienced massive increases in foreclosure activity. Kane County, a near-in county to the city of Chicago, saw foreclosure filings increase 97 percent in the last quarter over a comparable period last year.

I know the administration is working on this. The Home Affordable Modification Program is helping some families. I know Treasury has stepped up naming and shaming and hoping that it will provide more data for the public on which banks are actually trying. Some are—not much but some are. Many are not trying at all to renegotiate mortgages for people facing foreclosure. But no matter how much the Treasury Department leans on these bankers, the big banks that service most of these troubled mortgages have simply not stepped up to the plate.

Treasury reported yesterday that 3.3 million families are eligible for the Home Affordable Modification Program. Those are the families who are at least 2 months behind on their mortgages and in serious risk of being thrown out in the street. How many families, based on this 3.3 million families eligible for this program, have been able to get a bank to commit to a permanent loan modification that will keep them in their homes? There were 31,000 out of 3.3 million; less than one-tenth of 1 percent of the families in trouble have been able to work out a permanent solution with their bankers. That is disgraceful.

The big banks that created this mess continue to stand in the way of cleaning it up. They are making billions of dollars while foreclosing on millions of American families. Shaming the banks with speeches on the floor of the Senate isn't going to work. We have learned the hard way that many banks are beyond embarrassment. You can't embarrass bankers who take billions of taxpayer dollars to stay solvent and to overcome their bad banking policies, then turn around and pay millions out in bonuses to the officers of the same banks. You can't publicly shame bankers into doing something when they simply don't care.

But let's be clear. Congress hasn't done its part either. We have not done enough to make these banks help the American people who need some help. I will continue to come to the floor to remind my colleagues that we must address this crisis far more aggressively than we have, and I will continue to look for ways to help.

One last statistic. The Wall Street Journal ran a front-page story recently highlighting that one in four homeowners who are paying a mortgage today owes more on their mortgage than their house is worth. One in four homeowners is making house payments on a home that is now underwater. If you owe more than your house is worth and have no extra cash lying around, you are really vulnerable. If there is a sickness in your family, a health care emergency, a job loss, you could lose your home. If you are underwater, you are likely to stay there.

The 10.7 million families who find their mortgages are higher than the value of their homes are at serious risk of foreclosure. Over 400,000 of those families are at risk in my home State of Illinois. JPMorgan Chase estimates that home prices won't hit bottom until next year, so it is going to get worse before it gets better.

So do we stand idly by and watch this—watch people lose their life's savings and their homes, watch these boarded-up homes spring up across our neighborhoods, around towns large and small across America and shake our heads and say it is inevitable? We don't have to. What we have to do is lean on these banks legally, with new laws that put pressure on them to make a difference. Don't appeal to their better nature. We have tried that, and it didn't work. We have to use the law. We have to stand up for this economy and putting it back on its feet, and we have to make the point of saying to these bankers that they have to negotiate these mortgages.

We need to do our part in the Senate. As we focus on health care and jobs and the state of the economy, let's not lose sight of this foreclosure crisis that is devastating neighborhoods across the country. The economy will struggle to fully recover until more families are confident enough in their homes that they are willing to go out and go shopping again. We must do more.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I had a chance to listen to my good friend, the Senator from Illinois; his remarks about why the bill before the Senate is going to reduce costs and pay down on the national debt. Now, that is the Senator from Illinois. I am the Senator from Iowa. But I would like to not refer to my judgment about this bill right now. What I would like to refer to is the judgment outlined in a report that was issued today from the Chief Actuary of the Centers for Medicare & Medicaid Services in the Department of Health and Human Services, a professional person who calls it like it is. That is his responsibility.

Remember, I am quoting from a report that was just given today about this 2,074-page bill we have before us, and that my friend from Illinois was just speaking very favorably about. So I am going to talk about somebody in the executive branch of government, under the President of the United States, who says this about this reform bill—that it will cost more than the status quo. The Chief Actuary of the Centers for Medicare & Medicaid Services issued a report on Senator REID's bill which shows that health care costs would go up, not down, under his bill. The Chief Actuary warned that the Democrats' health care bill would increase health care costs, threaten access to care for seniors, and force people off their current coverage.

In other words, the administration's own Chief Actuary conclusively demonstrates that the Democrats' rhetoric does not match the reality of the bill. The cost curve would bend up, not down. National health expenditures would increase from 16 percent of GDP to 20.9 percent under the Reid bill. The Chief Actuary concluded that the Federal Government and the country would spend $234 billion more under the bill than without it. The Chief Actuary also says that the bill ''jeopardizes access to care for beneficiaries'' because of the bill's severe cuts in Medicare.

Quoting the Chief Actuary:

> Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and . . . might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

Then it speaks about the savings in the bill being unrealistic. The Actuary says that many of the Medicare cuts ''are unrelated to the providers' costs of furnishing services to beneficiaries.'' It is therefore ''doubtful'' that providers could reduce costs to keep up with the cuts.

Then the Chief Actuary speaks about new taxes costing consumers $11 billion per year. The new taxes in the Reid bill would increase drug and device prices and health insurance premiums for consumers. The Actuary estimates this would increase costs on consumers by $11 billion per year, beginning in 2011—that is 3 years before most benefits kick in.

Then the Actuary speaks about health care shortages, that these health care shortages are ''plausible and even probable,'' particularly for Medicare and Medicare beneficiaries. Because of the increased demand for health care, the Actuary says that access-to-care problems—again these words ''plausible'' and even ''probable'' under the Reid bill. The access problems will be the worst for seniors on Medicare and low-income people on Medicaid. The Actuary says ''providers might tend to accept more patients who have private insurance with relatively attractive payment rates and fewer Medicare and Medicaid patients, exacerbating existing access problems for the latter group.''

Premiums for the government-run plan would actually be higher than under private plans. Agreeing with the Congressional Budget Office, the Chief Actuary said that because the government plan would not encourage higher value health care and it would attract sicker people, premiums for the government-run plan would be 4 percent higher than for the private insurers.

Then there is a point about employers dropping coverage. The Chief Actuary concluded that 17 million people will lose their employer-sponsored coverage. Many smaller employers would be ''inclined to terminate their existing coverage'' so their workers could qualify for ''heavily subsidized coverage'' through the exchange.

Then it speaks, lastly, about the long-term health care part of this bill called the CLASS Act. The CLASS Act stands for Community Living Assistance Services and Support, C-L-A-S-S.

The Chief Actuary has determined that the CLASS Act long-term care insurance program faces ''a significant risk of failure'' because the high costs will attract sicker people and lead to low participation. Even though premiums would be $240 a month, the policy would result in ''a net Federal cost in the long term.''

I think quoting the Chief Actuary is a very good way to bring attention to the shortcomings that, on this side of the aisle, we have tried to discuss about the 2,074-page bill. Members on this side of the aisle have shown that the Reid bill will bend the health spending curve the wrong way over the next year and that the Reid bill cuts Medicare by $½ trillion and jeopardizes seniors' access to care. So, again, quoting from the Health and Human Services Chief Actuary's analysis confirms the dangerous consequences of the 2,074-page Reid bill.

I would like to highlight some of the findings in a more encompassing way than I just did, quoting the Chief Actuary.

First, contrary to what Members on the other side of the aisle claim, the Chief Actuary's report confirms that the Reid bill bends the cost curve the wrong way. According to the HHS Chief Actuary, over the next 10 years—and this chart highlights it—''total national health expenditures under this bill would increase by an estimated total of $234 billion.'' And a good portion of the increase in national health expenditures would be caused by the so-called fees in this bill on medical devices and on prescription drugs and on health insurance premiums.

Here we have a chart where the Chief Actuary found that ''. . . fees would . . . be passed through to health consumers in the form of higher drug and device prices and higher insurance premiums . . .'' This would result in ''. . . an associated increase of approximately $11 billion per year in overall national health expenditures.'' This refutes claims from the other side that the so-called fees won't be passed on to consumers. And this analysis clearly refutes claims from the other side that the Reid bill saves money.

Next, the Chief Actuary also confirms that the Reid bill jeopardizes beneficiary access to care. The Chief Actuary tallied up around $493 billion in net Medicare cuts, and he raised concerns in particular about two categories of these Medicare cuts.

First, the report warns about the permanent productivity adjustments to annual payment updates. These productivity adjustments ''automatically cut annual Medicare payment updates based on productivity measures for the entire economy,'' not just for that section of health care part of the economy.

The Chief Actuary confirms that these permanent cuts would threaten access to care. Referring to these cuts, he wrote that ''. . . the estimated savings . . . may be unrealistic'' and ''. . . possibly jeopardizing access to care for beneficiaries.''

''It is doubtful that many could improve their own productivity to the end achieved by the economy at large.'' This is a direct quote from the Chief Actuary's report. He goes on to say, ''We are not aware of any empirical evidence demonstrating the medical community's ability to achieve productivity improvements equal to those of the overall economy.''

In other words, basically he is saying this: If you are going to make a judgment that you are going to cut health care costs and that productivity has to be measured by the entire economy, you can't take the entire economy and apply it to a small segment of the economy—health care—and expect it to be fair and expect that small segment of the economy to be as productive and equal the productivity of the entire U.S. economy.

You have to listen to these people who are professionals in these areas. The Chief Actuary is a professional. In fact, the Chief Actuary's conclusion is that it would be difficult for providers to even remain profitable over time, as Medicare payments fail to keep up with the cost of caring for beneficiaries.

Referring to this chart, ultimately, here is the Chief Actuary's conclusion: that providers who rely on Medicare might end their participation in Medicare, ''. . . possibly jeopardizing access to care for beneficiaries.'' That is right out of the Chief Actuary's report, is where that quote comes from.

He even has numbers to back up these statements. His office ran simulations of the effect of these drastic and permanent cuts. Here we have the quote. Based on the simulations, the Chief Actuary found that during the first 10 years, ''. . . 20 percent of Medicare Part A providers would become unprofitable . . . as a result of productivity adjustments.

This is going to be horrible on rural America where we already have difficult times recruiting doctors and keeping our hospitals open. As I said, it is difficult to keep up with these productivity adjustments by our providers. It is for this reason that the Actuary found that ''reductions in payment updates . . . based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis.'' That is right out of the report of the Actuary.

The second category of Medicare cuts the Chief Actuary raises concerns about would be imposed by the new independent Medicare advisory board created in this 2,074-page bill. This new body of unelected officials would have broad authority to make even further cuts in Medicare. These additional cuts in Medicare would be driven by arbitrary cost growth targets based on a blend of general economic growth and medical inflation. This board would have the authority to impose further automatic Medicare cuts, even absent any congressional action.

The Chief Actuary gives a reality check to this proposal. He shows how tall an order the Reid bill's target for health care cost growth actually is.

Again quoting the Actuary:

> Limiting cost growth to a level below medical price inflation would represent an exceedingly difficult challenge.

He points out in this analysis that Medicare cost growth was below this target in only 4 of the last 25 years. Just think—what this 2,074-page bill is trying to accomplish is something that has been accomplished in only 4 out of the last 25 years.

The Actuary also points out that the backroom deals that carved out certain types of providers would complicate this board's effort to cut Medicare. So, to this analysis:

> The necessary savings would have to be achieved primarily through changes affecting physician services, Medicare Advantage payments, and Part D.

So providers, such as hospitals, will escape from this board's cut at the expense of doctors, Medicare Advantage plans, and higher premiums imposed on beneficiaries for their Medicare drug coverage, Part D of Medicare. If we survey the Nation's seniors, I doubt very much they would say that raising their premiums for Medicare drug coverage is what they would call health care reform.

This board, which can cut reimbursements, is guaranteed to have to impose these additional Medicare cuts. In other words, they can do it.

According to the Chief Actuary's analysis of the Medicare cuts in the Reid bill, even though the Medicare cuts already in the Reid bill are ''quite substantial,'' they would—the savings ''would not be sufficient to meet the growth rate targets.'' This means the board will be required by law to impose even more Medicare cuts, in addition to the massive Medicare cuts already in the bill.

This bill imposes a $2½ trillion tab on Americans. It kills jobs with taxes and fees that go into effect 4 years before the reforms kick in.

It kills jobs with an employer mandate. It imposes $½ trillion in higher taxes on premiums, on medical devices, on prescription drugs and more. It jeopardizes access to care with massive

Medicare cuts. It imposes higher costs. It raises premiums. It bends the growth curve the wrong way; in other words, up instead of down. This is not what people have in mind when they think about health care reform.

There is another aspect to this bill that I wish to go over. I hope the third time is the charm. I hope this time the other side of the aisle will understand that the Reid bill increases taxes on middle-income families, individuals, and single parents. That is because contrary to the claims made by the other side of the aisle, the Reid bill clearly raises taxes on middle-income Americans. We have data, not from this Senator, but as I quoted previously the expertise of the Chief Actuary, I want to quote the expertise now of the Joint Committee on Taxation, professionals who are blind to politics, who judge things and call them like they see them. Yesterday I pointed out how the same Joint Committee on Taxation data led my Democratic friends to proclaim that the Reid bill provided a net tax cut to all Americans. We have this distribution chart I used previously to show that that net really is not net.

There is no question that the bill does provide a tax benefit to a group of Americans, a relatively small group. A much larger group, however, will see their taxes go up. Most, if not all in this group, will not benefit from the government subsidy for health insurance. That is part of this 2,074-page bill. As a result, the generous subsidy that is in that bill that is going to a small group of Americans cannot be used by this larger group to offset their increased tax liabilities. The other side, however, wants to spread the large tax benefit that is going to this small group of Americans to everybody; in other words, all Americans, even among those Americans who are not eligible to receive the subsidy, and then somehow claim that all Americans are receiving a tax cut. How can a person receive a tax cut if they are not receiving some type of tax benefit?

Yes, the data shows that some will receive a benefit, but the data also shows that the others will see a tax increase. I have highlighted in yellow these various figures, individuals and families who will see a tax increase. In general, these individuals and families are not receiving the subsidy for health insurance. This means they have no government benefit to offset their new tax liability. The most important point I want to make—for the third time—is that these tax increases fall on individuals making more than $50,000 and families making more than $75,000. Again, I highlighted this group on the Joint Committee on Taxation chart.

The Joint Committee distributed in this chart three separate tax provisions: the high-cost plan tax, the medical expense deduction limitation, and the Medicare payroll tax. Among these tax provisions, the high-cost plan tax seems to be garnering the most attention and also tremendous opposition. I don't have to explain who the opponents of this tax increase are. Everybody knows. In fact, yesterday I had representatives of the Iowa Education Association, the teachers of Iowa, saying they are against that high plan tax because it is going to hurt Iowa teachers. So if this provision, the high-cost plan tax, were to drop out of the Reid bill for one reason or another—and this bill is still being written in secret or at least changes in this 2,074-page bill are being written in secret so who knows what is going to happen to this highly controversial thing—if it is taken out, some Members may feel they have successfully shielded the middle class from a tax increase. Unfortunately, for those Members who may be hopeful of this, lesser known tax provisions that are likely to stay in the changes that come through the Democratic health care reform product would still raise taxes on the middle class.

Again, don't take my word for it. The Joint Committee on Taxation tells us so. Specifically, that committee sent a letter to Senator CRAPO stating that tax provisions such as the cap on flexible savings accounts, the elimination of tax reimbursements for over-the-counter medicines and, most importantly, the individual mandate excise tax penalty will increase taxes on people making less than $250,000. That happens to be middle-class individual, middle-class families, and middle-class single parents.

I ask unanimous consent to have printed in the RECORD that letter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, December 9, 2009.

Hon. MIKE CRAPO,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAPO: This letter is in response to your request of December 8, 2009, for information regarding the ''Patient Protection and Affordable Care Act,'' as introduced by Senator Reid. In particular, you requested that we provide you with information on the provisions in the bill that would increase tax liability for taxpayers with adjusted gross income (''AGI'') under $200,000 ($250,000 in the case of a joint return).

In previous correspondence with you, we provided a distributional analysis of the bill. In estimating the distributional effects of the bill, we distributed items that have economic incidence on individuals, including some items that do not have statutory incidence. We are enclosing a copy of that distributional analysis for reference. Included in the distribution table are the following items that would have statutory incidence as well as economic incidence on individuals and are likely to increase tax liabilities for some taxpayers with AGI below $200,000 ($250,000 in the case of a joint return):

1. Raise the 7.5 percent AGI floor on medical expenses deduction to 10 percent; and
2. Additional 0.5 percent hospital insurance tax on wages in excess of $200,000 ($250,000 joint).

You asked us to enumerate items that we have not previously distributed and that we believe could affect the tax liability of taxpayers with AGI below $200,000 ($250,000 in the case of a joint return). Below is a list of the provisions that we have not previously distributed and that have statutory incidence on individuals, with some of those individuals likely to have income below your threshold:

1. Conform definition of medical expenses for health savings accounts, Archer MSAs, health flexible spending arrangements, and health reimbursement arrangements;
2. Increase the penalty for nonqualified health savings account distributions to 20 percent;
3. Limit health flexible spending arrangements in cafeteria plans to $2,500;
4. Impose a five-percent excise tax on cosmetic surgery and similar procedures; and
5. Impose an individual mandate penalty.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

THOMAS A. BARTHOLD.

Enclosure.

#D-09-26
November 19 2009

DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF $8,500/$23,000 ($9,850/$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT; PROVIDE EXCHANGE PLAN CREDITS AND SUBSIDIES TO CERTAIN LOW-INCOME TAXPAYERS; INCREASE HI TAX ON EARNINGS IN EXCESS OF $200,000 ($250,000 JOINT FILERS); AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)

Calendar Year 2017

INCOME CATEGORY (2)	CHANGE IN FEDERAL TAXES (3)		FEDERAL TAXES (3) UNDER PRESENT LAW		FEDERAL TAXES (3) UNDER PROPOSAL		Average Tax Rate (4)	
							Present Law	Proposal
	Millions	Percent	Billions	Percent	Billions	Percent	Percent	Percent
Less than $10,000	-$60	-0.6%	$10	0.3%	$10	0.3%	7.3%	7.2%
$10,000 to $20,000	-$6,154	-32.3%	$19	0.6%	$13	0.4%	4.8%	3.3%
$20,000 to $30,000	-$19,168	-36.7%	$52	1.7%	$33	1.1%	10.4%	6.6%
$30,000 to $40,000	-$18,744	-21.3%	$88	2.8%	$69	2.3%	13.9%	10.9%
$40,000 to $50,000	-$12,573	-11.3%	$111	3.6%	$98	3.2%	14.5%	12.9%
$50,000 to $75,000	-$12,007	-3.7%	$325	10.5%	$313	10.2%	16.2%	15.6%
$75,000 to $100,000	$2,292	0.7%	$346	11.1%	$349	11.4%	18.0%	18.1%
$100,000 to $200,000	$14,387	1.6%	$887	28.5%	$902	29.4%	22.6%	23.0%
$200,000 to $500,000	$6,187	1.2%	$535	17.2%	$541	17.6%	27.7%	28.0%
$500,000 to $1,000,000	$2,360	1.2%	$205	6.6%	$207	6.7%	29.9%	30.3%
$1,000,000 and over	$3,454	0.7%	$531	17.1%	$534	17.4%	29.8%	30.0%
Total, All Taxpayers	-$40,024	-1.3%	$3,109	100.0%	$3,069	100.0%	21.2%	20.9%

Source: Joint Committee on Taxation

Detail may not add to total due to rounding.

(1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of $8,500 for single plans and $23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of $9,850 for single plans and $26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except age 65 and older. The proposal would increase the hospital insurance ("HI") tax by 0.5 percentage points on earning in excess of $200,000 ($250,000 for married couples filing jointly. The analysis includes the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage.

(2) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.

(3) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

(4) The average tax rate is equal to Federal taxes described in footnote (3) divided by income described in footnote (2).

#D-09-26
November 19, 2009

DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF $8,500/$23,000 ($9,850/$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT; PROVIDE EXCHANGE PLAN CREDITS AND SUBSIDIES TO CERTAIN LOW-INCOME TAXPAYERS; INCREASE HI TAX ON EARNINGS IN EXCESS OF $200,000 ($250,000 JOINT FILERS); AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)

[Returns in Thousands; Dollars in Millions]

Calendar Year 2017

INCOME CATEGORY (2)	CHANGE IN FEDERAL TAXES (3)							
	All Returns		Single Filers		Joint Filers		Head of Household	
	Returns	Dollars	Returns	Dollars	Returns	Dollars	Returns	Dollars
Less than $10,000..................	785	-$60	562	-$9	92	$4	131	-$55
$10,000 to $20,000..............	4,149	-$6,154	2,955	-$4,031	426	-$522	768	-$1,601
$20,000 to $30,000..............	7,889	-$19,168	4,228	-$6,021	1,138	-$3,431	2,523	-$9,716
$30,000 to $40,000..............	9,396	-$18,744	4,694	-$2,857	2,006	-$6,138	2,696	-$9,749
$40,000 to $50,000..............	9,480	-$12,573	4,631	-$554	2,615	-$5,223	2,233	-$6,796
$50,000 to $75,000..............	19,375	-$12,007	7,621	$3,100	8,150	-$9,514	3,604	-$5,592
$75,000 to $100,000..............	14,038	$2,292	3,082	$1,695	9,619	$134	1,338	$464
$100,000 to $200,000..............	19,465	$14,387	2,326	$1,325	16,397	$12,545	743	$516
$200,000 to $500,000..............	4,845	$6,187	530	$792	4,200	$5,220	115	$175
$500,000 to $1,000,000...........	749	$2,360	79	$226	649	$2,066	22	$67
$1,000,000 and over..............	417	$3,454	49	$364	360	$3,016	9	$73
Total, All Taxpayers.........	**90,589**	**-$40,024**	**30,757**	**-$5,937**	**45,652**	**-$1,881**	**14,180**	**-$32,207**

Source: Joint Committee on Taxation

Detail may not add to total due to rounding.

(1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of $8,500 for single plans and $23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of $9,850 for single plans and $26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except age 65 and older. The proposal would increase the hospital insurance ("HI") tax by 0.5 percentage points on earning in excess of $200,000 ($250,000 for married couples filing jointly. The analysis includes the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage.

(2) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.

(3) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

Mr. GRASSLEY. In closing, let me turn to one more chart the Joint Tax Committee has provided. This chart shows the effect on the medical expense deduction limitation. This tax increase is just one of the many tax increases likely to stay in the new Democratic proposal. On this chart, which is for the year 2019, because that is when this bill is fully implemented, we see positive dollar figures. I have highlighted these dollar figures in yellow. For those who may not be able to see, I will reiterate that this chart only has positive dollar figures on it. But remember, as I explained yesterday, when we see positive dollar figures from the Joint Committee on Taxation, that committee is telling us that taxes for these people are going to go up. That means for all of the tax returns listed on this chart, taxes will be going up for each. And this tax increase, the medical expense deduction limitation, reaches as low as someone making $10,000 a year.

Maybe some of these low-income individuals and families who will see a tax increase under this provision will receive a subsidy for health insurance. These people may be able to offset this new tax liability. But you can bet your bottom dollar that a large portion of the middle-income individuals and families are not receiving a subsidy. This means that this tax liability highlighted in yellow cannot be offset by the government benefit.

My Democratic friends cannot escape that fact. Even if my friends drop some of the tax provisions in the current Reid bill, many tax provisions will most likely remain. And those tax provisions will increase taxes on middle-class Americans. This not only breaks President Obama's pledge, but it will arbitrarily burden middle-class Americans for years to come.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from New Jersey.

Mr. MENENDEZ. What is the pending business before the Senate?

The PRESIDING OFFICER. The conference report to accompany H.R. 3288.

Mr. MENENDEZ. I thank the Chair.

I rise about a program funded in that conference report. It is a program that we put under the framework of Cuba broadcasting. It is surrogate broadcasting into a closed society, a society for which the State controls all information or attempts to control all information to its 11 million citizens. It is a part of a long tradition of the United States with the Voice of America type of broadcasting, the effort to try to bring a free flow of information into countries in the world which are governed by despotic rulers. We did this successfully in the former Soviet Union. We did it successfully in Eastern Europe and during the changes in the Czech Republic, then Czechoslovakia, Poland, the Solidarity movement, and many others. We have been proud of that history of bringing the free flow of information. We now try to use it in different parts of the world based on the new challenges we have.

One of those places in the world in which we do this surrogate broadcasting is into the island of Cuba, because it has a repressive regime that will not allow the free flow of information to go to its people. We have a program called Radio and Television Marti. Marti is sort of like the George Washington of Cuba. It is named after him.

In 1983, Congress passed the Radio Broadcasting to Cuba Act to provide the people of Cuba, through Radio Marti, with information the Cuban Government would try to censor and keep from them. Subsequently in 1990, Congress authorized U.S. television broadcasting to Cuba through Radio and Television Marti to support the right of the Cuban people to receive information and ideas they would not normally receive. It opened radio and television broadcasting to Cuba, provided a consistently reliable and authoritative source of accurate, objective, and comprehensive news commentary and other information about events in Cuba and elsewhere. It did so to promote the cause of freedom inside of Cuba.

We know there is a long history of repressive regimes trying to block our surrogate broadcasting around the world. They just don't simply sit back and say: Send it all in. Let me accept whatever it is you are sending in. That is not their effort. Their effort is to block. And our difficulty with broadcasting has never been a justification for cutting funding for these programs. We have never submitted to the proposition that when a regime tries to block our surrogate broadcasting—whether it was Voice of America, Radio Free Europe, all of those efforts, there was always blocking taking place—that that is a cause or justification for cutting funding. It should not be a different standard now.

I ask, when it comes to Cuba broadcasting, why the double standard? In fact, especially now when change is coming to Cuba, it is in our interest to have the capacity to broadcast information to the Cuban people.

I want to show one of the charts that may be a little difficult back at home, but these are actual photographs which came from a January 2009 Government Accountability Office report which were provided by an organization that reports on Cuban affairs. It depicts evidence of Cubans' ability to watch Television Marti despite Cuban jamming efforts. These pictures were taken from inside of Cuba. They may not be the best picture quality, although I doubt they have digital television inside of Cuba. But nonetheless, they have the ability to see it.

There are other pictures of Cubans. Here is a picture of a group of individuals who, in fact, are part of an effort to create a library system, something as fundamental in the United States as a free public library. There isn't that in Cuba, at least not a free public library. They control what books might be found there.

So these groups try to create information. One of the things they do is, again, to be able to have access—as shown in this picture. This is a panel that is talking on Television Marti. Here, in this picture, is a young child watching a Marti program inside of Cuba. You can see the logo here of Marti TV.

As shown in this picture, this was a special that was broadcast into Cuba and was seen in Cuba on the Reverend Dr. Martin Luther King on the whole issue of peaceful, nonviolent change—as a message to the Cuban people that, in fact, these things could be achieved.

Now, you can see at the bottom of these pictures—it is a little hard to see—but here is the Marti logo that is seen on the bottom right-hand corner on several of these photographs.

This came from that Government Accountability Office report. A January 2009 report by the Government Accountability Office noted the following:

The Broadcasting Board of Governors—which is the oversight we have as the Federal Government—and the Office of Cuba Broadcasting and the U.S. Interests Section in Havana—which, in essence, is, we do not have an Embassy there because we do not have relations, but we have an Interests Section there—that Cuba officials emphasized that they face significant challenges in conducting valid audience research due to the closed nature of Cuban society.

U.S. government officials stationed in Havana are prohibited by the Castro regime from traveling outside of Havana.

We know it is difficult to travel to Cuba for the purpose of conducting audience research. We know the threat of Cuban Government surveillance and reprisals for interviewers and respondents raises concerns about respondents' willingness to answer sensitive questions frankly.

In this January 2009 Government Accountability Report, U.S. officials indicated that research on Radio and TV Marti's audience size faces significant limitations. For example, none of the data is representative of the entire Cuban population. Telephone surveys are the only random data collection effort in Cuba, but it might not be representative of Cuba's media habits for several reasons. But here are two of the main ones.

First, only adults in homes with published telephone numbers are surveyed. According to Broadcasting Board of Governors documents, approximately 17 percent of Cuban adults live in households with published household numbers. That means that 83 percent of the population does not have a published telephone number.

Second, the Board of Governors and the Office of Cuba Broadcasting officials noted that because individuals in

Cuba are discouraged or prohibited by their government from listening to and watching U.S. international broadcasts, they might be fearful of responding to media surveys and disclosing their media habits.

If I am told that it is illegal for me simply to watch the programming of some international organization, and that I can go to jail for listening to that programming, then ultimately—then ultimately—am I going to be truthful to some telephone survey about: Did I watch TV Marti? Did I listen to Radio Marti?

Mr. President, I know about this personally. Years ago, when I was in the House of Representatives, while I had an aunt who was still alive at the time, who I had asked never to acknowledge me as her nephew—which she agreed to—in my second term, however, she was listening to me on Radio Marti, and in a moment of pride, she said: ''Oh, that Menendez is my nephew.''

Unfortunately, she said it in front of some visitors who she thought were her friends. One of them was part of El Comite de Defensa de la Revolucion, which means ''The Committee to Defend the Revolution,'' a block watch organization in every city, in every village, in every hamlet inside Cuba, whose only job is to go and spy on their neighbors and tell the state security who speaks ill or does something against the regime.

Unfortunately, for that simple act of speaking out, saying to a friend: ''Oh, that Menendez is my nephew,'' my aunt suffered serious consequences.

So the audience size might very well be larger than the survey results would indicate because people are fearful to say: Yes, I am listening to Radio and Television Marti, because I cannot do that and not face the consequences of a regime that would arrest me.

Radio and TV Marti have a larger audience in Cuba. Why do I say that? Because a 2007 survey that the Office of Cuba Broadcasting commissioned, intended to obtain information on programming preferences and media habits, also contained data on Radio and TV Marti's audience size.

While the survey was not intended to measure listening rates or project audience size, this nonrandom survey of 382 Cubans, who had recently arrived in the United States—so now they were free to say what they actually did back at home because they were not subject to being arrested simply for listening to Radio and Television Marti—found that 45 percent of all of those respondents reported listening to Radio Marti and that over 21 percent reported watching TV Marti within the last 6 months before leaving Cuba.

So I rise because I want to bring this data, this information, this perspective to the debate.

I am happy to see the very deep cuts that were made to the Office of Cuba Broadcasting that contains both Radio and Television Marti have largely been restored. That is one of the reasons I felt willing to vote to proceed with the omnibus bill.

One of the body's greatest strengths is the ability to freely debate issues in an open format, issues on which, in the end, we might completely disagree, but issues that need to be brought into clear focus for the American people.

However, when I see my colleagues drawing conclusions on their own, without reasonable data to support those conclusions, I feel compelled to come and present an alternative perspective of the facts.

Why is this important to us. The United States is a beacon of light of freedom and democracy around the world. The promotion of democracy and human rights has always been one of the pillars of our foreign policy.

Yesterday was Human Rights Day, which is the day that marks the anniversary of the United Nations Assembly's adoption of the Universal Declaration of Human Rights in 1948. It is recognized every year on December 10.

Yesterday, in the midst of the recognition of this day in Havana, we saw the brutal Castro regime cracking down on people just because they were trying to exercise their right for peaceful demonstration. We saw people beaten, arrested, and forcibly detained.

There is a group of ladies; they call themselves the Ladies in White. They are mothers and sisters and friends of jailed dissidents inside of Cuba. So these are people of imprisoned family members—their son or their daughter, their brother or sister, their friends—and the only reason those people are in jail is because they have pursued peaceful means to try to create change inside of their own country. They may have said something. They may have worn a white band that says ''cambio,'' which means ''change.'' They may have simply uttered the fact that: What we need is change inside of Cuba.

So these Ladies in White—they dress fully in white so that, in fact, it is a form of being noticed, but, again, a peaceful form—held long-stem flowers and miniature Cuban flags. They were attacked by hundreds of angry pro-government demonstrators who sought to drown out their chants of ''freedom'' by yelling ''this street belongs to Fidel.''

Now, in Cuba, these groups are not spontaneous. It is not the citizenry. It is something called ''rapid response brigades.'' They are state security dressed as civilians, whose purpose is to make it seem that the populous is against the human rights activists and political dissidents. But, ultimately, they are state security agents who act in a way to make it seem quite different. But they are thugs.

Mr. President, the reason the regime organizes protests in this way is so if you orchestrate a protest, where it looks like its citizens are protesting against each other, then the regime can deny, in fact, any role in the event.

However, we know very well the role the Castro regime plays in these demonstrations. Especially in light of the events of yesterday and today, we know the Castro regime is a brutal totalitarian dictatorship that continues to violate the most basic human rights, continues to crush debate and crush dialog.

Yesterday, I came to the floor as part of my concerns and I spoke about this gentleman and his wife, as shown in this picture. I spoke about Jorge Luis Garcia Perez ''Antunez.'' This is a gentleman who said, while standing in a plaza in his hometown, which is in the center of Havana—it is not where the tourists go, not on the beaches of Havana; it is in the heart of Havana—he said what we need is the type of change we saw in Eastern Europe.

For that simple statement, he was thrown into jail for 17 years—17 years. He came out a couple years ago, but he has not changed. He has not changed his views or his effort to create human rights.

He issued a public letter that I read yesterday, an English translation, of a public letter he wrote to the present dictator, Raul Castro, the brother of Fidel Castro, and he said many things. I am not going to read the whole letter again, but he said things like: Let me ask you a few questions that I think are important.

With what right do the authorities, without a prior crime being committed, detain and impede the free movement of their citizens in violation of a universally recognized right?

The very rights that are being observed in that international Human Rights Day of the Universal Declaration of Human Rights.

What feelings could move a man like Captain Idel Gonzalez Morfi to beat my wife, a defenseless woman so brutally causing lasting effects to her bones for the sole act of arriving at a radio station to denounce with evidence the torture that her brother—

Her brother; this is his wife shown in the picture—

received in a Cuban prison.

I spoke about him yesterday and his letter. What happened today, Mr. President?

Today, the day after Human Rights Day, and the day after I read his letter into the RECORD, and 2 days after he presented that letter to Raul Castro, he was arrested again by the regime and arbitrarily detained with his wife and another activist.

What is his crime? That I read a letter in the U.S. Senate about his calls for freedom and democracy? And the day after the recognition of international human rights, he gets arrested today, and his wife gets arrested today—or detained today. I am not sure. He got arrested for sure.

TV Marti is one of the many efforts the U.S. Government rightly invests in to try to reach the Cuban people with information, to try to reach the people who were beaten today and yesterday and, for decades, simply for trying to demonstrate peacefully, to speak their mind, to walk in peace and in remembrance of their loved ones they lost under the clenched fists of this regime.

I feel badly that the day after I spoke about Mr. Antunez, he ends up in jail. So we need to have a spotlight, just as we did for Aleksandr Solzhenitsyn in the Soviet Union; just as we did for Vaclav Havel as he was trying to create change for the Czech Republic; just as we did with Lech Walesa when he was having the Solidarnosc Movement inside Poland.

For some reason, I can't get anybody to come to this floor and talk about the human rights violations inside Cuba. I hear a lot about: Let's trade with Cuba, let's do business with Cuba, let's travel to Cuba but, God, I never hear anyone talking about these human rights activists like the Lech Walesas, the Vaclav Havels, the Aleksandr Solzhenitsyns of that other time.

This man got arrested today simply because yesterday we made his letter public. That is the Castro regime that I know, not the romanticism of what some people have about what goes on at that island.

So I am pleased the Office of Cuba Broadcasting has made efforts over the last year to reevaluate the programs they are carrying out and carefully consider creative ways to reach the Cuban people. They have done this with Television Marti. They will continue to do this with other programs. I would expect nothing less. The kind of evaluation should continue. We should constantly strive to tailor our programs so our investments are reaching those who truly need our help, investments that are advancing U.S. foreign policy interests, the national interests of the United States, and the national security interests of the United States.

I have a declaration that came out of Cuba of over 100 human rights activists inside Cuba who are in support of the efforts of the United States as it relates to the surrogate broadcasting that goes into Cuba from Radio and Television Marti. This broadcasting provides some free flow of information of what is happening in the rest of the world, as well as what is happening inside Cuba. Because that is part of what we help here, to let those who otherwise would not know because of a closed society and a dictatorship that rules with an iron fist what is happening even inside their own country, what is happening to people such as Mr. Antunez, what is happening to the ladies in white who are protesting peacefully about their loved ones in jail.

Mr. MENENDEZ. With that letter of over 100 human rights activists is the recognition that we will not let up for Mr. Antunez and the recognition that there are voices who will continue to speak out for the human rights.

The last point I wish to make, imagine if you were sitting in a gulag somewhere, if you were beaten simply because you had a few words to say about creating change peacefully in your own country; imagine if you could be swept away by security police and taken to some jail and maybe not seen for years after that. Would you not want someone somewhere in the world to be standing and speaking for you? I would, and that is what I try to do on this floor.

With that, I yield the floor.

Mr. FEINGOLD. Mr. President, the massive, unamendable spending bill before the Senate includes three bills that the Senate never had a chance to consider, and is chock-full of earmarks. At a time of record budget deficits, we should be showing our constituents that we are serious about fiscal responsibility. Instead of controlling spending, this bill represents business as usual in Congress.

Mr. DEMINT. Mr. President, I rise today to address a question submitted to me from the good Senator from Illinois as to whether the DC Opportunity Scholarship Program will in fact end after this year. In order to respond to my colleague, I would like to highlight a particular section of the Financial Services and General Government Appropriations Act of 2010 that funds the District of Columbia's budget.

In title IV, which explains how the District of Columbia is funded, it states that $13.2 million will indeed be provided for opportunity scholarships for existing students in the DC Opportunity Scholarship Program. However, the very next line clearly states that the funds are to ''remain available until expended,'' which means that the program will eventually be phased out and terminated once the funding for current students is exhausted. Students in the program will slowly be phased out over time, unable to avail themselves of future educational opportunities currently given to them through this program.

The DC Opportunity Scholarship Program, which has the overwhelming support of DC residents, parents, Mayor Adrian Fenty, Chancellor Michelle Rhee, former Mayor Anthony Williams, and a majority of the DC City Council, has now been mandated a slow death by House and Senate appropriators. This scholarship program, which gives students of Washington, DC's poorest families a chance at a quality education, has now effectively been terminated since there is only funding available for existing scholarships and existing students, and not for future scholarships and future students.

By funding this program in such a manner in the omnibus, Congress is ultimately signaling the beginning of the end for this scholarship program. By disallowing future students to take part, the size of the program will shrink year after year, and will deny entry to siblings of existing participants—punishing many who have been waiting in line for this tremendous opportunity. Additionally, the federal evaluation of this program will be compromised as the numbers of participants diminishes, making it difficult for administrators to evaluate the effectiveness of the program.

The fact that this administration continues to claim that the DC Opportunity Scholarship Program is not being terminated is yet another act of deception on their part to the American people. The President, who himself is a recipient of a K–12 educational scholarship, has refused to stand up for children in our Nation's Capital and fight for the same educational opportunities afforded to him and his family—a right he exercises now as he practices school choice with his own children.

Mr. JOHNSON. Mr. President, working families are struggling to pay the costs of health care in this country. As the debate over health care reform progresses, we must keep in mind that Americans need and deserve quality, affordable health care. All too often families learn that the plan they could afford was not adequate when they needed it most.

I recently heard from Cory and Erin in Lake Herman, SD. They shared the story of their daughter's birth and how they discovered the inadequacies of their seemingly affordable health insurance policy. When Cory and Erin's daughter Katarzyna was born in 2006, Cory was working as an English and math teacher. At the time, the family health insurance plan available to him through the school district cost nearly 50 percent of his monthly salary. Cory chose instead to buy a catastrophic, high-deductible policy on the individual market for just over 10 percent of his income. Cory and Erin were healthy adults and had no major medical issues until the birth of their daughter. Their insurance policy did not cover prenatal or maternity care.

Wanting to be smart health care consumers, Cory and Erin shopped around for the best and most affordable hospital to welcome the birth of their first child and decided on their nearby community hospital. However, when Katarzyna was born, she had a lung infection that required immediate action. Exhausted and worried for the health of their new baby girl, Cory and Erin had only moments to decide whether to airlift Katarzyna to a hospital with specialized care. At that moment, the last thing they could think about was the cost.

Katarzyna spent 3 nights in the Natal Intensive Care Unit of one of the State's largest hospitals, where she received top-notch care and survived the near-fatal pneumonia. The total cost came to $24,000, of which Cory and Erin's high-deductible insurance policy covered only $12,000. For the next several months, the family faced not only the challenges of a new baby but significant debt and a drawn-out struggle with their insurance company. They found a mistake with nearly every bill they received. Since this experience, Cory and Erin have purchased a new policy but worry that the insurance they can afford is not adequate in the face of another unforeseen medical emergency.

Like many Americans, Cory and Erin have health insurance. Despite their limited income, they took the responsibility to buy their own policy and tried to be smart health care consumers. Their experience, however, illustrates the vulnerability of Americans who purchase insurance on the individual market, as well as the limits to which it is possible for Americans to be informed health care consumers.

The health care market does not function like other consumer markets. Ask your neighbor what a gallon of milk costs and they could tell you. Ask them how much it costs to have a baby and you would likely get a variety of answers, based entirely on their own experience with this important life event. The fact is the cost of having a baby depends. It depends on how much you pay for health insurance, what your insurance policy will cover and how much of that cost is your share. It depends on where you live, what complications may arise and whether the hospital nearby is equipped to handle an emergency.

The Patient Protection and Affordable Care Act will guarantee families access to affordable health insurance and coverage for essential benefits, including prenatal and maternity care. New health insurance exchanges in every State will provide a menu of quality, affordable health insurance plans for the self-employed and those who can't afford the coverage offered by their employer. Families who need assistance will be eligible for tax credits to make the plan of their choice affordable. Most importantly, families like Cory, Erin and Katarzyna's will have health insurance that covers life's essential needs. The birth of a child should not be a time to worry about what your health insurance will pay for or whether you can afford the treatment you need. Health care reform will give American families one less thing to worry about with the security of quality, affordable health care.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that after any leader remarks on Saturday, December 12, the Senate then resume consideration of the conference report to accompany H.R. 3288, and that at 9:30 a.m., the Senate proceed to vote on the motion to invoke cloture on the conference report, with the time until 9:30 a.m. equally divided and controlled between the leaders or their designees; further, that if cloture is invoked, then postcloture time continue to run during any recess, adjournment, or period of morning business; that on Sunday, December 13, all postcloture time be considered expired at 2 p.m., and the Senate proceed to vote on the adoption of the conference report to accompany H.R. 3288.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MORNING BUSINESS

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO CAROL BORNEMAN

Mr. McCONNELL. Mr. President, today I would like to recognize an outstanding Kentuckian for her talented efforts to entertain and educate the public about the Cumberland Gap National Historic Park. Ranger Carol Borneman is the recipient of the 2009 Freeman Tilden Award for the southeast region of the National Park Service. Ranger Carol, as she is commonly known from her television show, ''Wild Outdoor Adventures with Ranger Carol,'' has been with the Cumberland Gap National Historical Park for over 15 years and serves as the park's supervisory interpreter.

The Cumberland Gap, through the Cumberland Mountains and near the Kentucky-Virginia border, was America's historical gateway to the West. Ranger Carol's stories bring to life the travel experiences of America's earliest western settlers in a way that is both educational and memorable.

There is no doubt that it is Ranger Carol's love for the park that keeps her stories entertaining. Mark Woods, Superintendent of the Cumberland Gap National Historical Park, stated that ''she truly has a passion for the work that she does and it definitely comes through on the show. . . . You cannot watch the show without being captivated by Carol's knowledge, dedication, and sheer enthusiasm.''

The Freeman Tilden Award is the most prestigious award given in the field of interpretation and education within the National Park Service. Borneman is not new to such an honor; in fact, this is the second time she has received it. It is with great pride that I rise today to ask my colleagues to join me in congratulating Ranger Carol Borneman on receiving the Freeman Tilden Award, and for her outstanding efforts to keep important Kentucky history alive for future generations to enjoy.

REMEMBERING A. ROBERT DOLL

Mr. McCONNELL. Mr. President, today I would like to reflect on the life of a dear friend, the late A. Robert Doll. Bob, as he was affectionately known, was a well-known lawyer, leader, and volunteer in his beloved Louisville community. His passing is a great loss, but his legacy lives on in the business and organizations he so dearly loved.

Mr. Doll was a founding member of the law firm Greenebaum, Doll & McDonald in Louisville. He joined the firm in the 1950s after receiving his law degree from the College of William and Mary. During his 50-plus years with Greenebaum, Doll & McDonald, Bob helped the firm grow from a mere 20 lawyers to a firm with multiple offices and 120 lawyers. When Bob was just 30 years old, he argued and won a case before the U.S. Supreme Court.

Mr. Doll showed his respect for his customers with the motto, ''I believe that a successful law firm must emphasize and create the delivery of prompt and exceptional legal service to the client—we must remember that the client is king.'' One of the great successes of his career was helping to bring the Toyota plant to Scott County. He also served as the president of the Louisville Bar Foundation. In 1986, Mr. Doll was named Lawyer of the Year by the Louisville Bar Association.

Bob was also active in his community, as he served as president of the Greater Louisville YMCA board of directors and maintained a leading role in the Boy Scouts of America. Phillip Scott, the current firm chairman of Greenebaum, Doll & McDonald, stated that ''Mr. Doll was not just a great lawyer, but a great man and great leader. He was a progressive leader who made Greenebaum the firm it is today. We deeply value the friendship, ideals and character he bestowed upon on us, and we'll miss him greatly.''

As a leader in his community, Bob Doll was a man of integrity who made a real positive impact in the Commonwealth. His devotion for creating and maintaining a client-focused business shows he always cared about serving the community first. He will be missed by all who had the pleasure of knowing him, and I ask that my colleagues join me in paying tribute to the wonderful life of Mr. A. Bob Doll.

EL SALVADOR

Mr. LEAHY. Mr. President, I want to briefly discuss a subject that should interest all Senators concerning the country of El Salvador, which recently elected a new President and last month suffered extensive loss of life and devastating property damage as a result of torrential rains caused by Hurricane Ida.

First, I congratulate the people of El Salvador on the election, which was historic in that President Funes is the country's first President since the end of the civil war who is a member of the FMLN, which after the 1992 Peace Accords evolved from an armed insurgency into a political party. I am encouraged by what I have heard about President Funes' policies and wish him the best.

Second, the destruction caused by Hurricane Ida was extensive. Exceptionally heavy and constant rain fell on November 7 and 8, resulting in flooding and landslides that killed 192 people. Another 80 were reported missing, and more than 14,295 others were displaced from their homes. Thousands of homes, as well as roads, bridges, and other public buildings, were damaged or destroyed.

On November 10, U.S. Chargé d'Affaires Robert Blau declared a disaster in response to the damage, and the U.S. Agency for International Development has so far allocated some $280,851 in humanitarian aid. An assessment of the